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WHEN: Tuesday, April 9, 2013
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Contents

Federal Register

Vol. 78, No. 53

Tuesday, March 19, 2013

Agriculture Department
See Forest Service
RULES
Export Sales Reporting Requirements, 16777–16779
PROPOSED RULES
Export Sales Reporting Requirements, 16819–16821

Antitrust Division
NOTICES
Membership Changes Under National Cooperative Research and Production Act:
National Warheads and Energetics Consortium, 16868–16869
ODVA, Inc., 16869

Antitrust
See Antitrust Division

Centers for Medicare & Medicaid Services
RULES
Medicare and Medicaid Programs:
Requirements for Long-Term Care Facilities; Notice of Facility Closure, 16795–16806

Coast Guard
RULES
Special Local Regulations:
2013 International Rolex Regatta; St. Thomas Harbor; St. Thomas, U.S. Virgin Islands, 16780–16783

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16830–16831

Consumer Product Safety Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Testing and Recordkeeping Requirements Under Standard for Flammability (Open Flame) of Mattresses, 16840–16841

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Educational Opportunity Centers Program Annual Performance Report, 16843
Fiscal Operations Report for 2012–2013 and Application To Participate for 2014–2015 and Reallocation Form, 16841–16842
Formula Grant for the Electronic Application System for Indian Education, 16842–16843
Impact Evaluation of Math Professional Development, 16842

Employment and Training Administration
NOTICES
Funding Availabilities:
Training To Work—Adult Reentry, 16871
Lower Living Standard Income Level, 16871–16875

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Quality Implementation Plans; Approvals and Promulgations:
Georgia; Control Techniques Guidelines and Reasonably Available Control Technology; Amendments, 16783–16785
Ohio; Cleveland-Akron-Lorain and Columbus 1997 8-Hour Ozone Maintenance Plan Revisions to Approved Motor Vehicle Emissions Budgets, 16785–16790
Designations of Areas for Air Quality Planning Purposes:
State of California; Imperial Valley Planning Area for PM10; Clarification of Nonattainment Area Boundary, 16792–16795
State Implementation Plans; Approvals and Promulgations:
Idaho, 16790–16792
PROPOSED RULES
Air Quality Implementation Plans; Approvals and Promulgations:
Navajo Nation; Regional Haze Requirements for Navajo Generating Station, 16825–16826
Ohio; Cleveland-Akron-Lorain and Columbus 1997 8-Hour Ozone Maintenance Plan Revisions to Approved Motor Vehicle Emissions Budgets, 16826–16827
Designations of Areas for Air Quality Planning Purposes:
State of California; Imperial Valley Planning Area for PM10; Clarification of Nonattainment Area Boundary, 16827

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Final Commitments for Long-Term Loan or Financial Guarantee in Excess of 100 Million Dollars, 16852

Federal Aviation Administration
RULES
Type Certification Procedures for Changed Products, 16779–16780
PROPOSED RULES
Class E Airspace; Amendments:
Eureka, NV, 16821–16823
Class E Airspace; Establishments:
Tuba City, AZ, 16823–16824
NOTICES
Noise Compatibility Program:
Cleveland-Hopkins International Airport, Cleveland, OH; Approval, 16910–16911

Requests to Release Airport Properties:
Ankeny Regional Airport, Ankeny, IA; Intent to Rule, 16911–16912

Federal Communications Commission
RULES
Commercial Mobile Alert System, 16806–16808
Connect America Fund; High-Cost Universal Service Support, 16808–16816
Radio Broadcasting Services:
Ehrenberg, First Mesa, Kachina Village, Munds Park, Wickenburg, and Williams, AZ, 16816
Television Broadcasting Services:
Hampton-Norfolk, Virginia; Norfolk, Virginia-Elizabeth City, North Carolina, 16816–16817
PROPOSED RULES
Commercial Operations in 3550–3650 MHz Band, 16827–16828
NOTICES
Meetings:
Open Internet Advisory Committee, 16852

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16853–16854
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Survey of Unbanked and Underbanked Households, 16854–16856
Meetings:
Advisory Committee on Community Banking, 16856

Federal Emergency Management Agency
NOTICES
Major Disaster Declarations:
Mississippi; Amendment No. 4, 16862

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16843–16845
Applications:
Equitrans, LP, 16846–16847
Equitrans, LP, Equitable Gas Co., LLC, 16845–16846
Gulf South Pipeline Company, LP, 16845
Combined Filings, 16847–16849
Environmental Assessments; Availability, etc.:
Fall Creek Hydro, LLC, Oregon, 16849
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
MP2 Energy LLC, 16849
Meetings:
Alaska Energy Authority Dispute Resolution Panel, 16849–16850
Meetings; Sunshine Act, 16850–16852

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications:
Vision, 16912–16913

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 16856

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Status Review of West Coast Distinct Population Segment of Fisher as Endangered or Threatened, 16828–16829

Food and Drug Administration
PROPOSED RULES
Tobacco Product Manufacturing Practice, 16824–16825

Forest Service
NOTICES
New Fee Sites, 16830

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16863–16865

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16856–16857
Service Contract Inventory, FY 2011; Correction, 16857–16858

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
The Critical Infrastructure Partnership Advisory Council Membership Update, 16861–16862

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Emergency Shelter Grants Program, 16862–16863

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau

Internal Revenue Service
RULES
Certain Outbound Property Transfers by Domestic Corporations:
Certain Stock Distributions by Domestic Corporations, 17024–17052
Indirect Stock Transfers and Coordination Rule Exceptions:
Transfers of Stock or Securities in Outbound Asset Reorganizations, 17053–17065
PROPOSED RULES
Indirect Stock Transfers and Coordination Rule Exceptions:
Transfers of Stock or Securities in Outbound Asset Reorganizations, 17066–17067
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16914–16920

International Trade Administration
NOTICES
Antidumping and Countervailing Duty Orders:
Corrosion-Resistant Carbon Steel Flat Products From Germany and the Republic of Korea, 16832–16833

International Trade Commission
NOTICES
Investigations; Terminations, Modifications, Rulings, etc.:
Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers, 16865–16867

Justice Department
See Antitrust Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Southwest Border Prosecution Initiative, 16867
Request for Assumption of Concurrent Federal Criminal Jurisdiction; Mille Lacs Band of Ojibwe, 16867–16868

Labor Department
See Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Benefit Rights and Experience Report, 16870–16871
Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration, 16869–16870

Land Management Bureau
NOTICES
Meetings:
Arizona Resource Advisory Council, 16865

Management and Budget Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Economic Espionage and Trade Secret Theft; Legislative Review, 16875–16876

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 16860–16861
National Cancer Institute, 16861
National Heart, Lung, and Blood Institute, 16859–16860
National Institute of Diabetes and Digestive and Kidney Diseases, 16858–16859
National Institute on Aging, 16858–16859
Office of the Director, 16859–16860

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
2013 Commercial Accountability Measure and Closure for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, 16817–16818

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Geosciences, 16876

Nuclear Regulatory Commission
RULES
Physical Protection of Byproduct Material, 16922–17022
NOTICES
Facility Operating and Combined Licenses:
Applications and Amendments Involving No Significant Hazards Considerations, 16876–16889
License Amendment Request:
URENCO USA, 16890–16893
Meetings; Sunshine Act, 16893–16894
Proposed Internal Restructuring and Indirect Transfer of License:
Luminant Generation Company LLC, Comanche Peak Nuclear Power Plant, Units 1 and 2; Correction, 16894

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Privacy Act; Systems of Records, 16833–16840

Recovery Accountability and Transparency Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16894–16895

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 16903–16905
Chicago Board Options Exchange, Inc., 16895–16898
NASDAQ Stock Market LLC, 16898–16903
NYSE MKT LLC, 16905–16908

Surface Transportation Board
NOTICES
Temporary Trackage Rights Exemptions:
Norfolk Southern Railway Co. From Grand Trunk Western Railroad Co. and Wisconsin Central Ltd., 16913–16914

Trade Representative, Office of United States
NOTICES
Determinations Under the African Growth and Opportunity Act, 16908
Generalized System of Preferences Product Review; Competitive Need Limitations, 16908–16910

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Nuclear Regulatory Commission, 16922–17022

Part III
Treasury Department, Internal Revenue Service, 17024–17067

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
20 16777
Proposed Rules:
20 16819

10 CFR
20 16922
30 16922
32 16922
33 16922
34 16922
35 16922
36 16922
37 16922
39 16922
51 16922
71 16922
73 16922

14 CFR
21 16779
Proposed Rules:
71 (2 documents) 16821, 16823

21 CFR
Proposed Rules:
Ch. I 16824

26 CFR
1 (2 documents) 17024, 17053
602 (2 documents) 17024, 17053
Proposed Rules:
1 17066

33 CFR
100 16780

40 CFR
52 (3 documents) 16783, 16785, 16790
81 16792
Proposed Rules:
49 16825
52 16826
81 16827

42 CFR
483 16795
488 16795
489 16795
498 16795

47 CFR
10 16806
54 16808
73 (2 documents) 16816
Proposed Rules:
95 16827

50 CFR
622 16817
Proposed Rules:
17 16828

Rules and Regulations

Federal Register
Vol. 78, No. 53
Tuesday, March 19, 2013

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

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 AGRICULTURE

Office of the Secretary

7 CFR Part 20

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: USDA published a proposed rule in the **Federal Register** on June 25, 2012, which would have added reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and distillers dried grain (DDG) to the Export Sales Reporting Requirements (ESR). Under that proposed rule, all exporters of U.S. pork and DDG would have been required to report on a weekly basis, information on the export sales of pork and DDG to the Foreign Agricultural Service (FAS). This final rule implements the requirement to report weekly export sales of pork, but does not implement the requirement to report weekly export sales of DDG at this time.

DATES: The final rule will be effective on March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone on (202) 720–3274; or by fax (202) 720–0876.

SUPPLEMENTARY INFORMATION:

Background

USDA published a proposed rule in the **Federal Register** on June 25, 2012 (77 FR 37823), which would have added reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and DDG to the ESR. Under that proposed rule, all exporters of U.S. pork and DDG would have been required to report on a weekly basis, information on the export sales of pork and DDG to FAS. The 60-day public comment period ended on August 24, 2012.

A total of eight comments were received during the comment period. Adding pork to the ESR was supported by five comments and opposed by none. USDA is amending the regulation to add pork to the ESR, as is statutorily required.

Five comments mentioned DDG, of which three were favorable and two were unfavorable. One trade association stated: ''We believe [adding DDG] would facilitate market transparency and allow our industry and our corn marketing partners with the ability to conduct accurate and timely analysis of U.S. market conditions.'' Another commenter stated: ''[Adding DDG] would help avoid future price inflation such as we had in 1973/74 when the 'Great Russian Grain Robbery' occurred.'' Another commenter stated ''Having these [DDG] sales brings market transparency which will allow all market participants to digest the data.''

Another trade association expressed concerns about the impacts of adding DDG, stating: ''DDGs are traded with highly variable and specific quality terms that differ greatly based on end use. For example, exported DDGs often require a specific color or nutritional profile that's not necessarily the same as the product that's traded domestically. Providing export sales reporting may skew the markets viewpoint on domestic sales.'' Another commenter stated, ''I would question why DDGs are listed to be reported, and other corn milling co-products like Corn Gluten Feed, etc., are not. I would also like to know the compelling reason for the need to have DDGs reported at all?''

In response to the comments on DDG, USDA has determined that adding the reporting requirement for export sales of DDG requires further review and will be publishing a proposed rule, with extension of comment period, on the proposed reporting requirement for this commodity.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. USDA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register** because the Mandatory Price Reporting Act of 2010 (Pub. L. 111–239) mandates that pork be added to the ESR, and the comments with respect to pork favored adding pork to the ESR. Therefore, USDA has determined that it is in the public interest to amend the regulation to include pork as soon as possible and is immediately amending the regulation to add pork to the ESR.

Executive Order 12866

The rule has been determined to be not-significant under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This rule will not have a significant economic impact on small businesses.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with state and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. This rule neither provides federal financial assistance nor direct federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have a preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have a retroactive effect.

Before any judicial action may be brought forward regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this rule would not have any 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. Nor would this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Pub. L. 104–4 requires consultation with state and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these requirements are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Secretary of Agriculture is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this rule.

List of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, and Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 20 is amended as follows:

PART 20—EXPORT SALES REPORTING REQUIREMENTS

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

Authority: 7 U.S.C. 5712.

■ 2. Section 20.4 is amended by revising paragraph (c) to read as follows:

§ 20.4 Definitions.

* * * * *

(c) *Commodity.* Wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef and pork, and any products thereof, and any other agricultural commodity the Secretary may designate. ''Commodity'' shall also mean a commodity having identifying characteristics as described in any announcement issued pursuant to § 20.5 such as class(es) of wheat and rice, or staple length(s) of cotton. Mixed wheat shall be considered to be the predominant wheat class of the blend. This definition excludes commodities to be used for seed which have been treated in such a manner that their use is limited to seed for planting purposes or on which a certificate has been issued by a recognized seed testing laboratory setting forth variety, germination and purity.

* * * * *

■ 3. Appendix 1 to part 20 is revised to read as follows:

Appendix 1 to Part 20—Commodities Subject to Reporting, Units of Measure To Be Used in Reporting, and Beginning and Ending Dates of Marketing Years

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Wheat—Hard red winter	Metric Tons	June 1	May 31.
Wheat—Soft red winter	Metric Tons	June 1	May 31.
Wheat—Hard red Spring	Metric Tons	June 1	May 31.
Wheat—White (incl. Hard and soft white)	Metric Tons	June 1	May 31.
Wheat—Durum	Metric Tons	June 1	May 31.
Wheat—Products—All wheat flours (including clears) bulgur, semolina, farina, and rolled, cracked and crushed wheat.	Metric Tons	June 1	May 31.
Barley—Unmilled (including feed and hull-less waxy barley)	Metric Tons	June 1	May 31.
Corn—Unmilled (including waxy, cracked—if 50% whole kernels)	Metric Tons	Sept. 1	Aug. 31.
Rye—Unmilled	Metric Tons	June 1	May 31.
Oats—Unmilled	Metric Tons	June 1	May 31.
Grain Sorghum—Unmilled	Metric Tons	Sept. 1	Aug. 31.
Soybeans	Metric Tons	Sept. 1	Aug. 31.
Soybean Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Soybean Oil—including: crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydro-genated, packaged oil.	Metric Tons	Oct. 1	Sept. 30.
Flaxseed	Metric Tons	June 1	May 31.
Linseed Oil—including raw, boiled	Metric Tons	June 1	May 31.
Cottonseed	Metric Tons	Aug. 1	July 31.
Cottonseed Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Cottonseed Oil—including crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	Metric Tons	Oct. 1	Sept. 30.
Sunflowerseed Oil crude, once refined, sunflowerseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	Metric Tons	Oct. 1	Sept. 30.
Cotton—American Pima—Raw, extra long staple	Running Bales	Aug. 1	July 31.

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Cotton—Upland—Raw, staple length 1 1/16 inches and over	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 inch up to 1 1/16 inches	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length under 1 inch	Running Bales	Aug. 1	July 31.
Rice—Long grain, rough (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, rough (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Long grain, brown (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, brown (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Long grain, milled (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, milled (including parboiled, brewer's rice)	Metric Tons	Aug. 1	July 31.
Cattle Hides and Skins—Whole cattle hides, (excluding wet blues)	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole calf skins (excluding wet blues)	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole kip skins, (excluding wet blues)	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf, and kip cut into croupons, crops, dossets, sides, butts and butt bend (hide equivalent) (excluding wet blues).	Number	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf and kip, in cuts not otherwise specified; pickled/limed (excluding wet blues).	Pounds	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—unsplit (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—grain splits (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—splits, (excluding grain splits)	Pounds	Jan. 1	Dec. 31.
Beef—fresh, chilled or frozen muscle cuts/whether or not boxed	Metric Tons	Jan. 1	Dec. 31.
Pork—fresh, chilled or frozen muscle cuts/whether or not boxed	Metric Tons	Jan. 1	Dec. 31.

Dated: February 26, 2013.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2013–06086 Filed 3–18–13; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2001–8994; Amdt. No. 21–96]

RIN 2120–AK19

Type Certification Procedures for Changed Products

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; disposition of comments.

SUMMARY: On December 4, 2012, the FAA published a final rule; request for comments (77 FR 71691) to make the existing regulation consistent with the FAA's intent and with the certification practice both before and after the adoption of the existing rule. The 2012 final rule clarifies what an applicant must show regarding a ''changed product'' to comply with applicable standards and became effective on February 4, 2013. We sought public comment on that final rule even though it is only clarifying in nature. This action responds to the public comments the FAA received.

ADDRESSES: You may review the public docket for this rulemaking (Docket No. FAA–2001–8994) at the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the public docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Victor Powell, Certification Procedures Office (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 950 L'Enfant Plaza SW., Washington, DC 20024; telephone (202) 385–6326; email *victor.powell@faa.gov,* or Randall Petersen, Certification Procedures Office (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 950 L'Enfant Plaza SW., Washington, DC 20024; telephone (202) 385–6325, email *randall.petersen@faa.gov.*

For legal questions concerning this action, contact Douglas Anderson, Northwest Mountain Region—Deputy Regional Counsel (ANM–7), Office of the Chief Counsel, Federal Aviation Administration Northwest Mountain Regional Office, 1601 Lind Ave. SW., Renton, WA 98057; telephone (425) 227–2166; facsimile (425) 227–1007; email *douglas.anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2000, the FAA published a final rule entitled, ''Type Certification Procedures for Changed Products'' (65 FR 36244). In that final rule, the FAA revised the procedural requirements for the certification of changes to type-certificated products. The revision required the applicant to apply the latest airworthiness standards in effect, to the extent practical, for the certification of significant design changes of aircraft, aircraft engines, and propellers. Before this final rule, many changes to aeronautical products were not required to show compliance with the latest airworthiness standards. This final rule was needed because incremental design approval changes accumulated into significant differences from the original product. Also, the final rule was intended to expand under what conditions the latest airworthiness amendments needed to be applied to changes to aeronautical products.

To clarify what the 2000 final rule intended, the FAA published a final rule; request for comments also entitled, ''Type Certification Procedures for Changed Products'' (December 4, 2012, 77 FR 71691). The 2000 final rule requires an applicant to show that the ''changed product'' complies with applicable standards. The purpose of § 21.101 is to require an applicant to evaluate the proposed design change and its effect on the product rather than the re-evaluation (certification) of the entire changed product. Therefore, § 21.101 was amended in the 2012 final rule to replace ''changed product'' with ''change and areas affected by the change'' to accurately limit the scope of compliance responsibility for the applicant. That change was also made in § 21.97 for the same reason. The intended effect of the 2012 final rule is to make the applicable requirements

consistent with the FAA's intent and with the certification practice both before and after the adoption of the 2000 final rule.

Discussion of Comments

Two comments were received in the docket during the comment period for this final rule. The Boeing Company expressed concern with a possible increase in administrative burden of establishing the certification basis for changes it believes are significant at the product level. Transport Canada (TCCA) commented that it believes the final rule changes the significance of the assessment of the design change level relative to the entire product.

Boeing provided recommendations for changes to the preamble to the final rule regarding § 21.101 and to the final rule in general that it believes will reestablish and clarify the original intent of the regulation and concerns regarding the associated administrative burden to applicants. The FAA has considered Boeing's concerns and has determined that Boeing's recommendations need to be further evaluated before adoption. The FAA believes the original intent of the 2012 final rule as published is acceptable for clarifying an applicant's responsibility for showing compliance for the change and the areas affected by the change.

TCCA suggested that the final rule now has the unintended consequence of allowing a design change to be evaluated at an area, system, component, equipment, or appliance level only, rather than at the product level. TCCA further suggested that the final rule may lead to an interpretation that multiple design changes could now be evaluated individually for their significance, instead of their total effect on the product. TCCA believes the final rule will put into question the interpretation of what a significant change is and recommends that the FAA reconsider the rendering of the final rule. TCCA noted that implementation of the final rule may disrupt the harmonized implementation of pertinent regulations and guidance material.

The FAA agrees that the evaluation of a proposed design change needs to be at the product level and considered the effect of the final rule as it applied to product level and the evaluation of changes. However, it appears TCCA may have misunderstood the purpose and effect of the amendment and, as a result, conflated two separate issues. The first issue is the scope of the requirement of § 21.101 to show compliance. Prior to the amendment, § 21.101(a) required that the ''changed product'' must be shown to meet applicable requirements in effect on the date of application. ''Product'' is defined in § 21.1 to mean ''aircraft, aircraft engine, or propeller.'' Taken literally, the scope of the requirement to show compliance was the entire product, including the applicant's proposed change. In practice, applicants do not show that the entire product complies with applicable requirements; their compliance showings, and the FAA's findings, relate only to the proposed change and the areas affected by the change. The purpose of this amendment is simply to conform the wording of the rule to this long-standing practice.

The second issue is what requirements are applicable. Prior to this amendment, § 21.101(b) and (c) allowed the compliance showing to be made to earlier versions of the latest requirements if certain conditions are met. However, taken literally, these exceptions still required that the applicant show that the entire product complies at least with earlier versions of those requirements. Limiting the scope of this requirement eliminates the literal requirement to show compliance for areas not affected by the change.[1]

However, nothing in this amendment changes the exceptions in § 21.101(b) and (c) or the policies that have been developed for applying them. For example, the harmonized policy for determining whether a change is ''significant'' is that this evaluation is done at the ''product level.'' Under this amendment, this policy is unchanged. Similarly, precisely identifying the scope of an applicant's obligation to show compliance does not affect the existing requirement of § 21.101(b)(1) that significance be evaluated in context with all previous relevant design changes. We continue to agree with TCCA's view that ''the contribution to safety and practicality principles of 14 CFR 21.101 are intended to target a measurable benefit at a product level.''

The FAA finds that the original intent of the existing changed product final rule to apply to the evaluation of the change's particular effect on the total product level is maintained with this final rule. This rule is consistent with the preamble's goals and published guidance and is implemented as published on December 4, 2012.

Conclusion

After analyzing the comments submitted in response to this final rule, the FAA has determined that further revisions to it are unnecessary at this time. This determination is based on our finding that this final rule is necessary because it addresses the concern that the wording of the requirement in the 2000 rule for a compliance showing was too broad for an applicant for a major design change. Again, this rulemaking only clarifies the original intent of the 2000 final rule and makes the applicable requirements reflect the reality of existing practice. This rulemaking is not a departure from or addition to what is already being done by an applicant for a compliance showing to the FAA in this regard.

Issued in Washington, DC, on March 4, 2013.

Frank P. Paskiewicz,

Deputy Director, Aircraft Certification Service.

[FR Doc. 2013–06306 Filed 3–18–13; 8:45 am]

BILLING CODE 4910–13–P

[1] Even within ''areas affected by the change,'' there may be an ''area, system, component, equipment, or appliance'' that is not affected. Section 21.101(b)(2) allows applicants to show that these meet the requirements of earlier amendments. For example, in the preamble to the final rule, we cited the following example of ''areas affected by the change'': ''changing an airframe's structure, such as adding a cargo door in one location, may affect the frame or floor loading in another area.'' But even within these broad areas, an applicant may be able to show that certain portions of the area are not affected (e.g., wiring in the area may not be affected). As another example, if a passenger seat fitting is changed, the structure of the seat is affected, and thus §§ 25.561 and 25.562 would need to be addressed (and probably some other structural requirements). However, the seat fabric is not affected, so § 25.853 would not need to be addressed. This would allow the applicant to show that these sub-areas meet earlier versions of the applicable amendments.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–1079]

RIN 1625–AA08

Special Local Regulation; 2013 International Rolex Regatta; St. Thomas Harbor; St. Thomas, U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of St. Thomas Harbor in St. Thomas, U. S. Virgin Islands during the 2013 International Rolex Regatta, a series of sail boat races. The event is scheduled to take place on Friday, March 22, 2013 through Sunday, March 24, 2013. Approximately 65 sail boats will be participating in the races. It is

anticipated that approximately 20 spectator vessels will be present during the races. These special local regulations are necessary to ensure the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event. The special local regulation establishes a race area, where all persons and vessels, except those persons and vessels participating in the sail boat races, are prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule will be effective from 11 a.m. Friday, March 22, 2013 through 2 p.m. Sunday, March 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1098. 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 Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil*. 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:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard published a notice of proposed rulemaking (NPRM) on February 4, 2013, in the **Federal Register** (78 FR 7663). The Coast Guard received no public comments in the docket and no requests for public meetings.

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**. The Coast Guard did not receive information from the event sponsor early enough to both publish a NPRM and allow 30 days after publication before making this rule effective. The Coast Guard chose to notify the public and seek comment on this rule by publishing a NPRM. This final rule is necessary to protect the public and race participants during the regatta, and therefore, must be effective by the start of the event on March 22, 2013.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations under 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the 2013 International Rolex Regatta.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in the docket for this rulemaking. We made no changes to the regulation as originally proposed.

On March 22, 2013, through March 24, 2013, the St. Thomas Yacht Club is sponsoring the 2013 Rolex Regatta, a series of sail boat races. The races will be held on the waters of St. Thomas Harbor, St. Thomas, U. S. Virgin Islands. Approximately 65 sail boats will be participating in the races. It is anticipated that approximately 20 spectator vessels will be present during the races.

These special local regulations encompass certain waters surrounding on St. Thomas Harbor, St. Thomas, U. S. Virgin Islands. The special local regulations will be enforced from 11 a.m. until 2 p.m. every day from March 22, 2013 through March 24, 2013. The special local regulations consist of a race area. Within this area, all persons and vessels, except those persons and vessels participating in the sail boat races, are prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only three hours a day for three days, for a total of nine hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 received zero comments from the Small Business Administration on this rule. 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 may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of St. Thomas Harbor encompassed within the special local regulations from 11:00 a.m. until 2:00 p.m. on March 22, 2013, through March 24, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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 special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–1079 to read as follows:

§ 100.35T07–1079 Special Local Regulations; 2013 International Rolex Regatta, St. Thomas Harbor; St. Thomas, U.S. Virgin Islands.

(a) *Race area.* All waters of Rada Fajardo encompassed within the following points: starting at Point 1 in position 18°19.927 N, 64°55.973 W; thence east to Point 2 in position 18°19.970 N, 64°55.769 W; thence southeast to Point 3 in position 18°19.567 N, 64°55.594 W; thence south to point 4 in position 18°19.133 N, 64°55.474 W; thence west to point 5 in

position 18°19.133 N, 64°55.628 W; thence north to point 6 in position 18°19.568 N, 64°55.752 W; thence northwest back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area, unless participating in the race.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The Coast Guard will provide notice of the race area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Dates.* This rule will be enforced daily from 11 a.m. until 2 p.m. on Friday, March 22, 2013 through Sunday, March 24, 2013.

Dated: March 4, 2013.

D.W. Pearson,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2013–06253 Filed 3–18–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0448; FRL–9791–1]

Approval and Promulgation of Implementation Plans; Georgia; Control Techniques Guidelines and Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: On September 28, 2012, EPA published a final rule in the **Federal Register** approving Georgia State Implementation Plan (SIP) revisions, submitted through the Georgia Environmental Protection Division (GA EPD), related to reasonably available control technology (RACT) requirements. This correcting amendment corrects errors in the non-regulatory Code of Federal Regulations (CFR) language portion of the September 28, 2012, final approval. Specifically, this correction pertains to negative declarations made by GA EPD in its October 21, 2009, SIP submittal for certain source categories for which EPA has issued control technique guidelines (CTG). EPA's September 28, 2012, final rulemaking addressing Georgia's RACT revisions, approved the negative declarations; however, they were inadvertently omitted from the actual CFR non-regulatory language at the end of the final action.

DATES: Effective on March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Jane Spann, 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. Jane Spann may be reached by phone at (404) 562–9029 or by electronic mail address *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION: This action corrects an inadvertent omission in EPA's September 28, 2012, final action approving Georgia's RACT submittals. On October 21, 2009, Georgia submitted a SIP revision containing, among other things, the Atlanta Area RACT SIP. In this RACT submittal Georgia lists CTG source categories for which Georgia has rules or has made negative declarations.[1] On July 31, 2012 (77 FR 45307), EPA proposed approval of Georgia's October 21, 2009, SIP revision, including the negative declarations included therein. In EPA's September 28, 2012, final action (77 FR 59554), EPA approved Georgia's October 21, 2009, submission, including the list of Georgia rules and negative declarations. Towards the end of the September 28, 2012, final action, EPA inadvertently omitted the list of negative declarations in the CFR non-regulatory language. Today's correcting amendment will correct the CFR non-regulatory language to include the following information. Georgia made negative declarations in its October 21, 2009, SIP submittal related to the following CTG source categories:

1. Control of Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry (SOCMI) EPA–450/4–91–031, August 1993.
2. Control of VOC Emissions from Equipment Leaks from Natural Gas/Gasoline Processing Plants EPA–450/3–83–007, December 1983.
3. Control of VOC Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment EPA–450/3–83–006, March 1984.
4. Control of VOC Emissions from Air Oxidation Processes in SOCMI, EPA–450/3–84–015, December 1984.

EPA has determined that today's correcting action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because today's action simply makes a correction to a previous inadvertent omission in the non-regulatory text of the CFR. EPA previously provided for public notice and comment on the substantive SIP revision approval. In addition, EPA does not believe the public would be interested in commenting on the correction prior to this action being finalized, since this correction action does not change the conclusion of EPA's analysis or action addressing approval of the Georgia RACT rules.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action simply corrects an inadvertent omission in the CFR of a small portion of a SIP revision that EPA previously substantively approved. For these

[1] If no major sources of volatile organic compounds (VOC) or nitrous oxides emissions (each pollutant should be considered separately) in a particular source category exist in an applicable nonattainment area, a state may submit a negative declaration for that category.

reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely explicitly lists the CTG source categories for which Georgia made a negative declaration, is consistent with the substantive revisions to the Georgia SIP described in the final approval of the Georgia RACT SIP revisions and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an inadvertent omission for the non-regulatory text of EPA's September 28, 2012, final rule addressing the approval of the Georgia's RACT SIP, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely corrects an inadvertent omission for the non-regulatory text of EPA's September 28, 2012, final rule addressing the approval of the Georgia RACT SIP, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

■ 2. Section 52.570(e) is amended by adding new entries 38 through 41 to the table in numerical order to read as follows:

§ 52.570 Identification of plan.

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EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	*	*
38. Negative Declaration for Control of VOC Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry (SOCMI) EPA–450/4–91–031, August 1993.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	
39. Negative Declaration for Control of VOC Emissions from Equipment Leaks from Natural Gas/Gasoline Processing Plants EPA–450/3–83–007, December 1983.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	
40. Negative Declaration for Control of VOC Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment EPA–450/3–83–006, March 1984.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
41. Negative Declaration for Control of VOC Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI), EPA–450/3–84–015, December 1984.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0884; EPA–R05–OAR–2012–0970; FRL–9790–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Cleveland-Akron-Lorain and Columbus 1997 8-Hour Ozone Maintenance Plan Revisions to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the request by Ohio to revise the Cleveland-Akron-Lorain and the Columbus, Ohio 1997 8-hour ozone maintenance air quality State Implementation Plans (SIPs) under the Clean Air Act (CAA) to replace the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) emissions model. Ohio submitted the SIP revision requests to EPA on October 30, 2012, and December 12, 2012, respectively.

DATES: This direct final rule will be effective May 20, 2013, unless EPA receives adverse comments by April 18, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0884 and EPA–R05–OAR–2012–0970, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0884 and EPA–R05–OAR–2012–0970. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Scientist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is EPA approving?
II. What is the background for this action?
a. SIP Budgets and Transportation Conformity
b. Prior Approval of Budgets
c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period
d. Submission of New Budgets Based on MOVES2010a
III. What are the criteria for approval?
IV. What Is EPA's analysis of the State's submittal?
a. The Revised Inventories
b. Approvability of the MOVES2010a-Based Budgets
c. Applicability of MOBILE6.2-Based Budgets
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What is EPA approving?

EPA is approving new MOVES2010a-based budgets for the Cleveland-Akron-Lorain and the Columbus, Ohio, 1997 8-hour ozone maintenance areas. The Cleveland-Akron-Lorain and the Columbus, Ohio areas were redesignated to attainment of the 1997 8-hour ozone standard effective September 15, 2009, (74 FR 47414 and 74 FR 47404), and MOBILE6.2-based budgets were approved in those actions. The newly submitted MOVES2010a-based budgets will replace the existing MOBILE6.2-based budgets in the Ohio 1997 8-hour ozone maintenance plans and must then be used in future transportation conformity analyses for the area. At that time, the previously approved MOBILE6.2-based budgets would no longer be applicable for transportation conformity purposes.

The Cleveland-Akron-Lorain and the Columbus, Ohio 1997 8-hour ozone maintenance areas must use the MOVES2010a-based budgets starting on the effective date of this action. See the official release of the MOVES2010 emissions model (75 FR 9411–9414) for background, and section II.(c) below for details.

II. What is the background for this action?

a. SIP Budgets and Transportation Conformity

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given National Ambient Air Quality Standard (NAAQS). These emission control strategy SIP revisions (e.g., reasonable further progress (RFP) and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars, trucks and other on-road vehicles. These mobile source SIP budgets are the portions of the total emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance if they are not exceeded. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must ''conform'' to (i.e., be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The transportation conformity regulations can be found at 40 CFR part 51, subpart T, and part 93.

In general, before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, budgets that are replacing approved budgets must be found adequate and approved before budgets can replace older budgets. If the submitted SIP budgets are meant to replace budgets for the same purpose, as is the case with Ohio's MOVES2010a 1997 8-hour ozone maintenance plan budgets, EPA must approve the revised SIP and budgets, and must affirm that they are adequate at the same time. Once EPA approves revised budgets into the SIP, they must be used by state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

b. Prior Approval of Budgets

EPA had previously approved budgets for the Cleveland-Akron-Lorain and the Columbus, Ohio, 8-hour ozone maintenance areas for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the year 2012 and 2020 on September 15, 2009, (74 FR 47414 and 74 FR 47404). These budgets were based on EPA's MOBILE6.2 emissions model. The ozone maintenance plans established 2012 and 2020 budgets for the Cleveland-Akron-Lorain and the Columbus, Ohio areas. The 2012 approved budgets for VOCs NO_X and the 2020 budgets for VOCs and NO_X were approved in the September 15, 2009, rulemakings. These budgets demonstrated a reduction in emissions from the monitored attainment year and included a margin of safety.

c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

The MOVES model is EPA's state of the art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010. MOVES will be required for new regional emissions analyses for transportation conformity determinations (''regional conformity analyses'') outside of California that begin after March 2, 2013, or when EPA approves MOVES-based budgets, whichever comes first.[1] The MOVES grace period for regional conformity analyses applies to both the use of MOVES2010 and approved minor revisions (e.g., MOVES2010a and MOVES2010b). For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (April 2012), available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models.*

EPA has encouraged areas to examine how MOVES would affect future transportation plan and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA has also encouraged state and local air agencies to consider how the release of MOVES would affect analyses supporting SIP submissions under development (77 FR 9411, March 2, 2010, and 77 FR 11394, February 27, 2012).

The Metropolitan Planning Organizations (MPOs) for the Cleveland-Akron-Lorain and the Columbus, Ohio areas have used MOVES2010a emission rates with the transportation network information to estimate emissions in the years of the transportation plan and also for the SIP. The budgets have been revised using the latest planning assumptions including population and

[1] Upon the release of MOVES2010, EPA established a two-year grace period before MOVES is required to be used for regional conformity analyses (75 FR 9411, March 2, 2010). EPA subsequently promulgated a final rule on February 27, 2012 to provide an additional year before MOVES is required for these analyses (77 FR 11394). In this case the grace period ends on March 2, 2013.

employment updates. In addition, newer vehicle registration data has been used to update the age distribution of the vehicle fleet. Since MOVES2010 (or a minor model revision) will be required for conformity analyses after the grace period ends, the MPOs have concluded that updating the budgets with MOVES2010a will prepare the areas for the transition to using MOVES for conformity analyses and determinations. The interagency consultation group has had extensive consultation on the requirements and need for new budgets.

d. Submission of New Budgets Based on MOVES2010a

On October 30, 2012, and December 12, 2012, Ohio submitted final budgets based on MOVES2010a that cover the Ohio areas of Cleveland-Akron-Lorain and Columbus, Ohio. Ohio received no comments during the public review and comment period.

The MOVES2010a based budgets will replace the prior approved MOBILE6.2 based budgets and are for the same years and pollutants/precursors. The new MOVES2010a based budgets are for the years 2012 and 2020 for both VOCs and NO_X and are detailed in Tables 5 and 6 of this notice. Ohio has also provided total emissions including mobile emissions based on MOVES2010a, for the attainment year of 2006, and the 2020 maintenance year. The safety margin is defined as the reduction in emissions from the base year (in this case the 2006 attainment year) to the final year of the maintenance plan (in this case the 2020 year). The total emissions include point, area, non-road mobile and on-road mobile sources. The available safety margin for each area is shown in Tables 1 and 2.

TABLE 1—TABLE OF TOTAL EMISSIONS WITH MOVES2010a MOBILE EMISSIONS—CLEVELAND-AKRON-LORAIN

[Tons per summer day]

Year	2006	2020	Safety margin
VOC	121.59	37.54	84.05
NO_X	274.22	94.23	179.99

TABLE 2—TABLE OF TOTAL EMISSIONS WITH MOVES2010a MOBILE EMISSIONS—COLUMBUS

[Tons per summer day]

Year	2006	2020	Safety margin
VOC	260.58	128.59	131.99
NO_X	330.99	127.29	203.70

The MPOs have added only a small portion of the overall safety margin available for NO_X and VOCs to the budgets for 2012 and 2020. The submittal demonstrates how all emissions decline from the attainment year of 2006. In 2006, the total estimated NO_X emissions from all sources in the Cleveland-Akron-Lorain area (including mobile, point, area and non-road sources) is 274.22 tons per day (tpd) and the total VOC emissions, for the 2006 attainment year, from all sources is 121.59 tpd. The 2020 estimated emissions for total NO_X from all sources is 94.23 tpd and the total VOC emissions from all sources is 37.54 tpd. This reduction in emissions demonstrates that the area will continue below the attainment level of emissions and maintain the 1997 8-hour ozone standard. The mobile source emissions, when included with point, area and non-road sources continue to demonstrate maintenance of the attainment level of emissions in the Ohio areas of Cleveland-Akron-Lorain and Columbus, Ohio.

No additional control measures were needed to maintain the 1997 ozone standard in the Cleveland-Akron-Lorain and the Columbus, Ohio areas. An appropriate safety margin for NO_X and VOCs was decided by the interagency consultation group (the interagency consultation group as required by the state conformity agreement consists of representatives from the Federal Highway Administration, the Ohio Environmental Protection Agency (OEPA), Ohio Department of Transportation, and EPA). The submitted budgets for the Cleveland-Akron-Lorain and the Columbus, Ohio areas are shown in Tables 5 and 6. These budgets will continue to keep emissions in the Cleveland-Akron-Lorain and the Columbus, Ohio areas below the calculated attainment year of emissions.

III. What are the criteria for approval?

EPA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (e.g., RFP, attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The SIP must also meet any applicable SIP requirements under CAA section 110.

In addition, the transportation conformity rule (at 40 CFR 93.118(e)(4)(iv)) requires that ''the budgets, when considered together with all other emissions sources, is consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to the given implementation plan submission).'' This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate and approve them for conformity purposes.

In addition, areas can revise their budgets and inventories using MOVES without revising their entire SIP if (1) the SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the baseline/attainment year and maintenance year are the same or greater using MOVES than they were previously. The submittal meets this requirement as described below in section V.

For more information, see EPA's latest ''Policy Guidance on the Use of MOVES2010 for SIP Development, Transportation Conformity, and Other

Purposes'' (April 2012), available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models.*

IV. What is EPA's analysis of the State's submittal?

a. The Revised Inventories

The Ohio SIP revision requests for the Cleveland-Akron-Lorain and the Columbus, Ohio 1997 ozone maintenance plans seek to revise only the on-road mobile source inventories and not the non-road inventories, area source inventories or point source inventories for the 2012 and 2020 years for which the SIP revises the budgets. OEPA has certified that the control strategies remain the same as in the original SIP, and that no other control strategies are necessary. This is confirmed by the monitoring data for the Cleveland-Akron-Lorain and the Columbus, Ohio areas, which continue to monitor attainment for the 1997 8-hour ozone standard. Thus, the current control strategies are continuing to keep the area in attainment of the NAAQS.

EPA has reviewed the emission estimates for point, area and non-road sources and concluded that no major changes to the projections need to be made. Ohio finds that growth and control strategy assumptions for non-mobile sources (i.e., area, non-road, and point) have not changed significantly from the original submittal for the years 2006, 2012, and 2020. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2006, 2012, and 2020 continue to be valid and do not affect the overall conclusions of the plan.

Ohio's submissions confirm that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions from mobile sources) as shown in Tables 1 and 2 demonstrate that emissions in the Cleveland-Akron-Lorain and the Columbus, Ohio areas are continuing to decline and remain below the attainment levels.

Ohio has submitted MOVES2010a-based budgets for the Cleveland-Akron-Lorain and the Columbus, Ohio areas that are clearly identified in the submittals. The budgets are displayed in Tables 5 and 6.

b. Approvability of the MOVES2010a-Based Budgets

EPA is approving the MOVES2010a-based budgets submitted by Ohio for use in determining transportation conformity in the Cleveland-Akron-Lorain and the Columbus, Ohio 1997 ozone maintenance areas. EPA is making this approval based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our in-depth evaluation of the State's submittals and SIP requirements. EPA has determined, based on its evaluation, that the area's maintenance plans would continue to serve its intended purpose with the submitted MOVES2010a-based budgets and that the budgets themselves meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4).

The adequacy criteria found in 40 CFR 93.118(e)(4) are as follows:

- The submitted SIP was endorsed by [the Governor/Governor's designee] and was subject to a state public hearing (§ 93.118(e)(4)(i));
- Before the control strategy implementation plan was submitted to EPA, consultation among Federal, state, and local agencies occurred, and the state fully documented the submittal (§ 93.118(e)(4)(ii));
- The budgets are clearly identified and precisely quantified (§ 93.118(e)(4)(iii));
- The budgets, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (§ 93.118(e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the control strategy implementation plan (§ 93.118(e)(4)(v)); and
- The revisions explain and document changes to the previous budgets, impacts on point and area source emissions and changes to established safety margins and reasons for the changes (including the basis for any changes related to emission factors or vehicle miles traveled) (§ 93.118(e)(4)(vi)).

We find that Ohio has met all of the adequacy criteria. Public hearing materials were submitted with the formal SIP revision request. The interagency consultation group, which is composed of the state air agencies, state departments of transportation, Federal Highway Administration, EPA and the MPO for the area, has discussed and reviewed the budgets developed with MOVES2010a and the safety margin allocation. The budgets are clearly identified and precisely quantified in the submittals. The budgets when considered with other emissions sources (point, area, non-road) are consistent with continued maintenance of the 1997 ozone standard. The budgets are clearly related to the emissions inventory and control measures in the SIP. The changes from the previous budgets are clearly explained with the change in the model from MOBILE6.2 to MOVES2010a and the revised and updated planning assumptions. The inputs to the model are detailed in the submittal. EPA has reviewed the inputs to the MOVES2010a modeling and participated in the consultation process. The Federal Highway Administration and the Ohio Department of Transportation have taken a lead role in working with the MPO to provide accurate, timely information and inputs to the MOVES2010a model runs. The MPO network models provided the vehicle miles of travel and other necessary data from the travel demand network models.

The CAA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (in this case, maintenance). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Ohio's submitted MOVES2010a based budgets meet EPA's two criteria for revising budgets without revising the entire SIP:

(1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES2010a base year and milestone, attainment, or maintenance year inventories, and

(2) The state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

Ohio has documented that growth and control strategy assumptions continue to be valid and do not change the overall conclusions of the maintenance plan. The emission estimates for point, area and non-road sources have not changed. Ohio finds that growth and control strategy assumptions for non-mobile sources (i.e. area, non-road, and point) from the original submittal for the years 2006, 2012, 2020 were developed before the down-turn in the economy over the last several years. Because of this, the factors included in the original submittal may project more growth than actual into the future. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2006, 2012, and 2020 continue to be valid and do not affect the overall conclusions of the plan.

Ohio's submissions confirm that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions under the revised SIP (which includes MOVES2010a emissions for mobile sources) decrease from the 2006 attainment year to the year 2020 (the last year of the maintenance plan). These totals demonstrate that emissions in the Cleveland-Akron-Lorain and the Columbus, Ohio areas are continuing to decline and remain below the attainment levels. Tables 3 and 4 display total emissions in both the Cleveland-Akron-Lorain and the Columbus, Ohio areas including point, area, non-road, and mobile sources and demonstrates the declining emissions from the 2006 attainment year.

TABLE 3—TABLE OF TOTAL EMISSIONS WITH MOVES2010a MOBILE EMISSIONS—CLEVELAND-AKRON-LORAIN

[Tons per summer day]

Year	2006	2020
VOC	121.59	37.54
NO_X	274.22	94.23

TABLE 4—TABLE OF TOTAL EMISSIONS WITH MOVES2010a MOBILE EMISSIONS—COLUMBUS

[Tons per summer day]

Year	2006	2020
VOC	260.58	128.59
NO_X	330.99	127.29

Tables 5 and 6 below display the submitted budgets that are being approved. The budgets include an appropriate margin of safety while still maintaining total emissions below the attainment level.

TABLE 5—TABLE OF MOTOR VEHICLE EMISSION BUDGETS (MOVES) FOR THE CLEVELAND-AKRON-LORAIN 1997 OZONE AREA

[Tons per summer day]

Year	2012	2020
VOC	81.54	43.17
NO_X	189.27	108.36

TABLE 6—TABLE OF MOTOR VEHICLE EMISSION BUDGETS (MOVES) FOR THE COLUMBUS 1997 OZONE AREA

[Tons per summer day]

Year	2012	2020
VOC	93.99	50.34
NO_X	188.85	99.12

Based on our review of the SIPs and the new budgets provided, EPA has determined that the SIPs will continue to meet the requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a inventories.

c. Applicability of MOBILE6.2-Based Budgets

Pursuant to the State's requests, EPA's approval of the revised budgets means that the existing MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes upon the effective date of this approval.

In addition, upon this EPA approval of the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOBILE6 instead of MOVES2010 (and subsequent minor revisions) for the pollutants included in these budgets ends for the Cleveland-Akron-Lorain and Columbus, Ohio 1997 ozone maintenance area.[2]

V. What action is EPA taking?

EPA is approving the 2012 and 2020 submitted budgets for the Cleveland-Akron-Lorain and Columbus, Ohio 1997 ozone maintenance plans. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 20, 2013 without further notice unless we receive relevant adverse written comments by April 18, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective May 20, 2013.

[2] For more information, see EPA's "Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (April 2012).

VI. 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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 4, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. Section 52.1885 is amended by adding paragraph (ff)(13) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) * * *

(13) Approval—On October 30, 2012, and December 12, 2012, Ohio submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 8-hour ozone maintenance plans for the Cleveland-Akron-Lorain and Columbus, Ohio areas. The budgets are being revised with budgets developed with the MOVES2010a model. The 2012 motor vehicle emissions budgets for the Cleveland-Akron-Lorain, Ohio area are 81.54 tpd VOC and 189.27 tpd NO_X. The 2020 motor vehicle emissions budgets for the Cleveland-Akron-Lorain, Ohio area are 43.17 tpd VOC and 108.36 tpd NO_X. The 2012 motor vehicle emissions budgets for the Columbus, Ohio area are 93.99 tpd VOC and 188.85 tpd NO_X. The 2020 motor vehicle emissions budgets for the Columbus, Ohio area are 50.34 tpd VOC and 99.12 tpd NO_X.

* * * * *

[FR Doc. 2013–06210 Filed 3–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0640, FRL–9791–2]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions to Idaho's State Implementation Plan (SIP) submitted by the Director of the Idaho Department of Environmental Quality (IDEQ) on July 13, 2011, for approval into the Idaho SIP. The submitted revisions relate to Idaho's open burning and crop residue disposal requirements and establish a streamlined permitting process for spot burns, baled agricultural residue burns, and propane flaming. The submitted revisions also make minor changes to the existing crop residue disposal rules to update cross references and clarify certain administrative information. On January 11, 2013, EPA proposed to approve these revisions into Idaho's SIP. The EPA is taking final action to approve this submittal because it satisfies the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 18, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2011–0640. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that 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: Donna Deneen at (206) 553–6706, *deneen.donna@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, it is intended to refer to the EPA.

Table of Contents

I. Background
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

On July 13, 2013, the Director of the Idaho Department of Environmental Quality submitted revisions to the Idaho SIP that relate to Idaho's open burning and crop residue disposal requirements and establish a streamlined permitting process for spot burns, baled agricultural residue burns, and propane flaming. The submitted revisions also make minor changes to the existing crop residue disposal rules to update cross references and clarify certain

administrative information. In a proposed rule published on January 11, 2013, EPA proposed to approve these revisions to the Idaho SIP. 78 FR 2359. An explanation of the Clean Air Act requirements and implementing regulations that are met by this SIP, a detailed explanation of the revision, and EPA's reasons for approving it were provided in the notice of proposed rulemaking on January 11, 2013, and will not be restated here. The public comment period for this proposed rule ended on February 11, 2013. EPA did not receive any comments on the proposal.

II. Final Action

EPA is approving the July 13, 2011, SIP submittal from the State of Idaho as meeting the requirements of the Clean Air Act.

III. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 7, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart N—Idaho

■ 2. Section 52.670(c), the table in paragraph (c) is amended:

■ a. By revising entries 617 and 618.

■ b. By revising entry 620.

■ c. By revising entries 622 through 623.

■ d. By adding in numerical order entry 624.

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
617	Crop Residue	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
618	Permit By Rule	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	

EPA-APPROVED IDAHO REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
620	Registration Fee	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
*	*	*	*	*
622	General Provisions	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
623	Public Notification	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
624	Spot Burn, Baled Agricultural Residue Burn, and Propane Flaming Permits.	7/1/11	3/19/13 [Insert page number where the document begins]	
*	*	*	*	*

* * * * *

[FR Doc. 2013–06198 Filed 3–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2013–0135; FRL–9791–6]

Designation of Areas for Air Quality Planning Purposes; State of California; Imperial Valley Planning Area for PM_{10}; Clarification of Nonattainment Area Boundary

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is clarifying the description of the Imperial Valley planning area, an area designated as nonattainment for the national ambient air quality standard for particulate matter with an aerodynamic diameter of a nominal 10 microns or less (PM_{10}). EPA is not changing the boundaries of the PM_{10} area or the status of the area as a ''serious'' PM_{10} nonattainment area but is clarifying the description of this partial county area in the Code of Federal Regulations.

DATES: This direct final rule is effective May 20, 2013, unless EPA receives adverse comment by April 18, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2013–0135 by one of the following methods:

1. Federal eRulemaking Portal, at *www.regulations.gov,* please follow the on-line instructions;
2. Email to *ward.laweeda@epa.gov;* or
3. Mail or delivery to La Weeda Ward, Air Division (AIR–1), U.S. Environmental Protection Agency, Region 9, 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information you consider to be CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Weeda Ward, Air Division (AIR–1), U.S. Environmental Protection Agency, Region 9, 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017, telephone number (213) 244–1812, or email *ward.laweeda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

Table of Contents

I. Background
II. EPA's Final Action
III. Statutory and Executive Order Reviews

I. Background

EPA sets the National Ambient Air Quality Standards (NAAQS) for certain ambient air pollutants at levels required to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or PM_{10}, is one of these ambient air pollutants for which EPA has established health-based standards.

EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24633), replacing standards for total

suspended particulates (TSP less than 30 microns in diameter) that were set in 1971 with new standards applying only to particulate matter up to 10 microns in diameter (PM_{10}). Simultaneously, EPA published revised requirements for state implementation plans (SIPs) to attain and maintain the standards (52 FR 24672, July 1, 1987). To focus Federal and State resources on implementing the PM_{10} NAAQS first in those areas of the country believed to be violating the standards, EPA classified all areas of the Nation into one of three groups. Group I areas were those having a very high probability of violating the PM_{10} standards based on ambient air quality data available for 1984 through 1987 for PM_{10} and TSP. Group II areas had a moderate probability of violating the standards, and Group III areas were those believed to be currently attaining the standards.

A list of Group I and II areas in each State was published on August 7, 1987 (52 FR 29383). Within Imperial County,[1] EPA listed two areas, ''Imperial Valley planning area'' and ''Yuma planning area,''[2] among the Group I areas. The remaining portions of any State not listed as Group I or II were classified in Group III.

On October 31, 1990 (55 FR 45799), EPA clarified the descriptions of several Group I and II areas of concern. In so doing, EPA did not clarify the description of the ''Imperial Valley planning area'' but did eliminate ''Yuma planning area'' as a Group I or II area of concern within Imperial County, California.

Under section 107(d)(4)(B) of the Clean Air Act (CAA or ''Act''), as amended in 1990, certain areas were designated as nonattainment for PM_{10} by operation of law upon enactment of the 1990 Amendments (i.e., November 15, 1990). These areas included all areas included in Group I in EPA's 1987 list (unless changed by EPA prior to the 1990 Amended Act) as well as certain Group II and III areas. The Imperial Valley planning area, as a former ''Group I'' area, was one of the areas designated as a PM_{10} nonattainment area by operation of law effective November 15, 1990.

On March 15, 1991 (56 FR 11101), EPA announced all of those areas that were designated nonattainment for PM_{10} by operation of law and announced that all of the nonattainment areas were classified as ''moderate,'' also effective November 15, 1990. The ''Imperial Valley planning area'' was one of the areas listed by EPA in March 1991 as an ''initial'' PM_{10} nonattainment area. On November 6, 1991 (56 FR 56694), EPA codified the PM_{10} nonattainment area designations, including the nonattainment area designation for ''Imperial Valley planning area,'' in 40 CFR part 81.[3]

States with ''moderate'' PM_{10} nonattainment areas were required under the CAA as amended in 1990 to revise their SIPs to provide for attainment of the PM_{10} NAAQS no later than December 31, 1994. ''Moderate'' areas that failed to attain the PM_{10} NAAQS by December 31, 1994 were subject to reclassification to ''serious.'' Such reclassification would extend the applicable attainment date to December 31, 2001 but would require the SIP for the area to be further revised to meet more stringent requirements than had applied to ''moderate'' areas. On August 11, 2004 (69 FR 48792), EPA determined that the Imperial Valley planning area failed to attain the PM_{10} NAAQS by December 31, 1994 and reclassified the area to ''serious.''

The listing of the ''Imperial Valley planning area'' in the PM_{10} area designations table in 40 CFR 81.305 without further description has led to some confusion as to the precise boundaries of the designated nonattainment area, and the purpose of today's direct final rule is to clarify the description of the ''Imperial Valley planning area'' to eliminate such confusion. Specifically, we are clarifying in this action that the ''Imperial Valley planning area'' PM_{10} nonattainment area is that portion of Imperial County that is defined as follows: Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200;[4] then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning.

For the purposes of this action, EPA reviewed the **Federal Register** documents listed above as well as EPA memoranda and State planning documents. Based on that review, EPA confirmed the accuracy of the above description. Specifically, EPA found that:

- EPA's 1987 listing of two Group I areas within Imperial County, i.e., the ''Imperial Valley planning area'' and the ''Yuma planning area,'' establishes that ''Imperial Valley planning area'' is a partial county area;
- The long-standing use of Hydrologic Units to describe other PM_{10} area designations in desert areas of California (*see,* e.g., the PM_{10} area designations in 40 CFR 81.305 for Coso Junction planning area, Owens Valley planning area, Trona planning area, and Indian Wells planning area) establishes precedent for the use of such units to describe the PM_{10} area designation for ''Imperial Valley planning area,'' which is also a California desert area;
- EPA staff memorandum dated July 17, 1991 describes the ''Imperial Valley Study Area'' boundary in terms of latitude and longitude that approximate the hydrologic unit boundary;
- EPA staff map, undated but believed to have been prepared in the early 1990s, illustrates the Imperial Valley planning area in terms of the northeastern boundary line for Hydrologic Unit #18100200;
- EPA map (dated May 1992) of PM_{10} area designations within Region IX shows the Imperial Valley nonattainment area as covering that portion of the county east of a line that appears to approximate the northeastern boundary line for Hydrologic Unit #18100200; and
- A SIP submittal dated January 11, 1994 for the Imperial Valley planning area from the California Air Resources Board (CARB) to EPA includes a PM_{10} plan that describes the nonattainment area as containing ''most of Imperial County (approximately 80%) except for the portion east of the Chocolate Mountain Range'' and includes a figure that illustrates the nonattainment area showing a northeastern boundary line that approximates the boundary for Hydrologic Unit #18100200.[5]

Through today's action, EPA is not changing the boundaries of the Imperial Valley planning area PM_{10} nonattainment area, but is simply clarifying the boundaries of the existing PM_{10} nonattainment area by providing a more detailed description herein and in 40 CFR 81.305. EPA is also not changing the status or classification of the Imperial Valley planning area PM_{10} nonattainment area. As such, the area

[1] Imperial County is located in the southeastern corner of California. It borders Mexico to the south, Riverside County to the north, Arizona to the east, and San Diego County to the west. Imperial County lies within the Sonoran Desert.

[2] EPA also listed ''Yuma planning area'' as a Group I area within Yuma County, Arizona.

[3] California area designations are codified at 40 CFR 81.305.

[4] Within Imperial County, the northeastern boundary of Hydrologic Unit #18100200 generally follows the crestline of the Chocolate Mountains.

[5] See pages 1–2 and 1–3 of the Imperial Valley PM_{10} Plan submitted by CARB on January 11, 1994.

remains designated as ''nonattainment'' for PM_{10} and classified as ''serious.''

II. EPA's Final Action

EPA is clarifying that the Imperial Valley planning area PM_{10} nonattainment area is that portion of Imperial County that is defined as follows: Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200; then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning. EPA is not changing the boundaries of the PM_{10} area or the status of the area as a ''serious'' PM_{10} nonattainment area but is simply clarifying the description of this partial county area and amending the applicable table in 40 CFR 81.305 accordingly.

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 20, 2013 without further notice unless we receive adverse comments by April 18, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now.

III. Statutory and Executive Order Reviews

This action simply clarifies the description of an existing air quality planning area and would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not ''significant regulatory actions'' 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 economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not significant regulatory actions 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the action simply clarifies the description of existing air quality planning area and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 6, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—[Section 107 Attainment Status Designations]

■ 2. Section 81.305 is amended in the table for ''California-PM–10'' by revising the entry for ''Imperial County'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—PM_{10}

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* *	*	*	*	* *
Imperial County	11/15/90	Nonattainment	9/10/04	Serious
Imperial Valley planning area: That portion of Imperial County that is defined as follows:				
Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200; then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning.				
* *	*	*	*	* *

[FR Doc. 2013–06208 Filed 3–18–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 483, 488, 489, and 498

[CMS–3230–F]

RIN 0938–AQ09

Medicare and Medicaid Programs; Requirements for Long-Term Care (LTC) Facilities; Notice of Facility Closure

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule adopts, with technical changes, the interim rule that published February 18, 2011. That interim rule revised the requirements that a long-term care (LTC) facility must meet in order to qualify to participate as a skilled nursing facility (SNF) in the Medicare program, or a nursing facility (NF) in the Medicaid program. The requirements implemented section 6113 of the Patient Protection and Affordable Care Act to ensure that, among other things, in the case of an LTC facility closure, individuals serving as administrators of a SNF or NF provide written notification of the impending closure and a plan for the relocation of residents at least 60 days prior to the impending closure or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate.

DATES: Effective on April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Collins, (410) 786–3189.
Ronisha Davis, (410) 786–6882.
Lisa Parker, (410) 786–4665.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

According to the Centers for Medicare & Medicaid Services (CMS) data, as of October 2011, there were 15,720 long-term care (LTC) facilities (commonly referred to as nursing homes) in the United States. These facilities are generally referred to as skilled nursing facilities (SNFs) in the Medicare program and as nursing facilities (NFs) in the Medicaid program. For the past decade, CMS Survey and Certification Tabulation of Certification and Survey Provider Enhanced Reporting (CASPER) data have shown a decline in the number of nursing homes, from 17,508 in 1999 to 15,720 in 2011. In 2010, there were 141 nursing home closures. In 2011, there were 90 closures.

LTC facility closures have implications related to access to care, the quality of care, availability of services, and the overall health of residents. Therefore, having an organized process that facilities must follow in the event of a nursing home closure will protect residents' health and safety, and make the transition as smooth as possible for residents, as well as family members and facility staff.

On February 18, 2011, we published in the **Federal Register** an interim final rule with comment period, entitled ''Requirements for Long-Term Care (LTC) Facilities; Notice of Facility Closure'' (76 FR 9503). In that rule, we revised the current requirements for LTC facilities under the provisions of section 1128I(h) of the Social Security Act (the Act), as added by section 6113(a) of the Patient Protection and Affordable Care Act (Pub. L. 111–148, March 23, 2010)(Affordable Care Act). The new statutory provision requires us, among other things, to impose sanctions on the administrator of an LTC facility for failure to provide proper notice to specified parties, including CMS, that the facility is about to close.

B. Legislative History and Statutory Background

Sections 1819(b)(1)(A) of the Act for SNFs and 1919(b)(1)(A) of the Act for NFs both state that a SNF/NF must care for its residents in a manner and in an environment that will promote maintenance or enhancement of the quality of life of each resident.

Sections 1819(c)(2)(A)(vi) and 1919(c)(2)(A)(vi) of the Act state that in general, with certain specified exceptions, a SNF/NF must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility, except under specified circumstances, including, at clause (vi), when the facility ceases to operate.

As described in detail in the preamble of the February 18, 2011 interim final rule, section 6113 of the Affordable Care Act added subsection 1128I(h) to the Act, setting forth certain requirements for LTC facility closures, effective March 23, 2011. We issued this rule in the form of an interim final rule because we believed delaying implementation would continue to cause unjustified harm to LTC facility residents, families and visitors, and to meet the March 23, 2011 statutory deadline for implementation (76 FR 9508).

II. Health Disparities

In the February 18, 2011 interim final rule, we discussed our goal of addressing health care disparities (76 FR 9505). We noted that research has extensively documented the pervasiveness of vulnerable populations which can be defined by race/ethnicity, socioeconomic status, geography, gender, age, disability status, sexual orientation, and other factors. Although there has been much attention at the national level to ideas for reducing health disparities in vulnerable populations, we remain vigilant in our efforts to improve health care quality for all persons by improving health care access and by eliminating real and perceived barriers to care that may contribute to less than optimal health outcomes for vulnerable populations.

We specifically requested comments in regard to how our revised LTC facility closure requirements could be used to address disparities among facility residents.

The comments we received on this provision and our responses are set forth below.

Comment: Several commenters encouraged CMS to review a number of policies and make changes that would have a positive impact on health disparities. One commenter encouraged CMS to review disparate treatment of all the populations that were identified in the preamble of the regulation and provide the appropriate information and support that would improve access to culturally competent care, language access, legal and counseling services. The commenter suggested that CMS also work with the patient advocacy community.

Another commenter suggested that CMS examine all of the facilities owned by the provider to determine whether there are differences in the quality of care provided, including significant differences between predominantly Caucasian and predominantly minority facilities.

Other commenters suggested that CMS should require more monitoring of facility finances, following up on all indicators of financial problems through special surveys of compliance and financial audits. It was also suggested that the concentration of Medicaid beneficiaries in a small number of facilities would be reduced if CMS clarified that financial screening is illegal under existing law. Another commenter recommended CMS issue new guidance to State Survey Agencies of existing conditions of participation that prohibit discriminatory admissions practices and provide training for State Survey Agencies on how to identify discriminatory practices by facilities.

Response: We appreciate the comments received on this very important issue. CMS is committed to addressing health care inequalities for racial and ethnic minorities that rely on Medicare and Medicaid for quality health care. We will consider these comments in the development of future regulations.

III. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

In response to the February 18, 2011 interim final rule, we received 15 public comments. Interested parties that submitted comments included individuals, advocacy organizations, and industry associations. In this final rule, we provide a summary of each provision, a summary of the public comments received and our responses, and any changes to the interim final rule we are implementing as a result of comments received.

A. Transfer and Discharge (§ 483.12(a))

Timing of Notice

We revised § 483.12(a)(5)(i), Timing of the Notice, to accommodate the closure notice provisions of § 483.12(a)(8) and § 483.75(r)(1)(i). The February 18, 2011 interim final rule requires the administrator of a facility to provide written notification of a facility's closure to specified individuals, including facility residents, at least 60 days prior to the date of a voluntary closure. This 60-day notice requirement is an exception to the general 30-day advance notice requirement governing transfer and discharge of individual patients from an LTC facility. The comments we received on this provision and our responses are set forth below.

Comment: One commenter requested clarification regarding the interaction between existing State policies (where applicable) and Federal regulations when the State requires no less than 60 days notice. The commenter stated that many States already have notification of closure requirements in place, and expressed concern that in those States, a nursing facility administrator will be required to complete two notifications: one consistent with State law and regulations and one consistent with Federal law and regulations.

Response: Only one notification would be required by this regulation, either 60 days prior to closure for voluntary closures or as the Secretary determines appropriate for involuntary closures. CMS does not have authority over State licensure, health, reporting, or facility requirements. However, according to § 488.3(b)(3), any time a State law applicable to providers or suppliers of Medicaid services in that State is more stringent that the Federal requirements, as is hypothesized here, CMS must enforce the more stringent State requirement as a condition of Medicare payment. For example, if the State law requires the administrator of a NF participating in its State Medicaid program to provide a 90-day notice of closure, the administrator would provide 90 days notice, since it is more stringent for compliance with Federal law. Failure to do so would put both its Medicaid and Medicare payments at risk. We also note that regardless of whether State or Federal regulations provide for a longer notification period, no-preemption issue arises because a facility complies with both laws by complying with the longer notification period.

Notice of Closure

We added a new § 483.12(a)(8) to require that, in the case of a facility closure, any individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC ombudsman, the residents of the facility, and the legal representatives of the resident or other responsible parties, as well as provide a plan for the transfer and adequate relocation of the residents, in accordance with the new section § 483.75(r). As discussed in detail below, in section III. B of this preamble, we have revised § 483.12(a)(8) to conform with changes to § 483.75(r). The comments we received on this provision and our responses are set forth below.

Comment: One commenter suggested that in the final rule, the LTC facility be required to notify the medical director, attending physicians and other clinicians who regularly provide healthcare services within the LTC facility of that facility's closure.

Response: We appreciate the commenter's suggestion; however, we do not consider it necessary to provide

additional language in the final rule regarding notices to physicians and/or other clinicians providing services to the resident. We believe this issue is sufficiently addressed in § 483.12(a)(3)(i), ''Documentation,'' which requires that when a facility transfers or discharges a resident, the resident's clinical records must be documented and the documentation must be made by the resident's physician. Therefore, a resident's physician and/or other practitioners would have received notice of the impending closure because they are required to be involved in the discharge plan for the resident. We will incorporate language into the State Operations Manual (SOM) to specify that a resident's practitioner(s) must be involved as soon as the notice of closure has been sent to the residents to assure, as stated in § 483.75(r)(3), that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services and location, taking into consideration the needs, choice, and best interests of each resident.

B. Facility Closure—Administrator (§ 483.75(r))

We added a new paragraph (r) to § 483.75, which requires any individual who is the administrator of the facility to submit to the Secretary, the State LTC ombudsman, residents of the facility, and the legal representative of such residents (or other responsible parties) written notification of an impending closure at least 60 days prior to the date of closure; or, in the case of a facility where the Secretary terminates the facility's participation in the Medicare and/or Medicaid programs, no later than the date that the Secretary determines appropriate for such notification. The language of this paragraph parallels that of section 1128I(h) of the Act, as added by section 6113(a) of the Affordable Care Act. The comments we received on this provision and our responses are set forth below.

Comment: The majority of commenters supported the February 18, 2011 interim final rule, stating that they believe the rule would improve resident notification and facility planning, and would ensure a smooth relocation of LTC facility residents in the event of a facility closure or relocation.

Response: We appreciate the support from the commenters on this rule. We believe that having a requirement that establishes an organized process that facilities must follow in the event of an LTC facility closure protects residents' health and safety, and makes the transition as smooth as possible for residents, family members and facility staff.

Comment: A few commenters recommended that the final rule define the term ''closure.'' Another commenter suggested specific changes to the language in § 483.75(r)(1). The commenter suggested that we revise the regulation to require that the administrator submit, ''written notification of an impending closure whenever 10 or more residents are likely to be transferred due to any voluntary or involuntary change in the status of the license or operation of a facility, including but not limited to, a facility closure or voluntary or involuntary termination of a facility's Medicaid or Medicare certification.'' One commenter recommended that an exception be made to the requirement of written notification for unplanned events, such as a fire, major storms, or flooding.

Response: For the purpose of this regulation, ''closure'' means an LTC facility that ceases to operate under § 483.12(a)(2)(vi), and therefore, is no longer providing care and services to residents. We believe that the notification requirements should be met regardless of the number of residents likely to be transferred. We do not believe that establishing criteria for a minimum number of residents that must be affected before the notice requirements apply promotes the highest quality of care during what can be a difficult situation. We believe that all residents should be made aware of a facility closure in a reasonable amount of time, regardless of the size of the facility, as this regulation currently requires.

Regarding unplanned events, current regulations at § 488.426(a), ''Transfer of residents,'' or closure of the facility and transfer of residents, gives a State the authority to transfer Medicare and Medicaid patients out of a facility (temporarily or permanently) in emergency situations. If the State orders the temporary relocation of residents during an emergency, with the expectation that the residents will return to the facility, this would not be regarded as a facility closure under this requirement and the notification requirements under § 483.75(r) would not be applicable. For example, if a facility's air conditioning failed during a heat wave, the State could order the facility to relocate all of its residents while the problem was being investigated, without closing the facility.

Comment: One commenter suggested that the final rule allow for a longer notification period for residents and their families, as well as others, in the case of an involuntary closure. A longer notice period would give family members time to consider whether a home and community-based setting would better meet the LTC facility resident's needs than placement in another LTC facility. The commenter further recommended that, to the extent possible, the closure notification requirement for involuntary terminations should be at least 60 days in advance of closure, consistent with the rule for voluntary closures, or at a minimum, 30 days, consistent with the transfer/discharge provisions at § 483.12(a)(5)(i), unless there is an immediate threat to the health and safety of residents that necessitates a shorter notification timeframe.

Response: This regulation does not preclude a facility from providing a longer notification period if it chooses. Only the State has the authority to close a facility. CMS has authority to terminate provider agreements and thereby Medicare payments, as well as the Federal Medicaid matching payment to the State. In this case, the notification requirements are determined by the Secretary in collaboration with the State. In the preamble of the February 18, 2011 interim final rule, we provided background information regarding how the Secretary may determine a date for notification (76 FR 9506).

Additionally, § 483.75(r)(3) requires that the administrator include in the written notification of closure assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident. We believe that this requirement sufficiently addresses the commenter's concern about ensuring that the resident's needs are successfully met upon relocation to another facility or location.

Comment: One commenter suggested that in addition to State's approving the closure plan prior to notification and overseeing closures, LTC facility administrators should also be required to send the notice directly to the State Survey Agencies.

Response: We agree with the commenter that the written notification should also be given to the State Survey Agency. The State Survey Agency acts on the behalf of the Secretary and the intent of the February 18, 2011 interim final rule was to ensure that the notification went to the State Survey Agency. Therefore, we are revising the regulation at § 483.75(r)(1) to clarify that any individual who is the administrator

of the facility must submit to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure. As noted above, we have also revised § 483.12(a)(8) to clarify that the written closure notification must be submitted to the State Survey Agency.

C. New Admissions After Closure Notice (§ 483.75(r)(2))

At § 483.75(r)(2), we require any individual who is the administrator of the LTC facility to ensure that the facility does not admit any new residents on or after the date, which such written notification of facility closure is submitted to the Secretary, the State LTC ombudsman, and the residents, and/or their representatives or other responsible parties.

We did not receive any public comments regarding this requirement; therefore, we are finalizing § 483.75(r)(2) as published in the interim final rule.

D. Closure Notice (§ 483.75(r)(3))

At § 483.75(r)(3), we require that any individual who is the administrator of an LTC facility include in the written notice of closure, a plan that has been approved by the State for the transfer and adequate relocation of the residents by a date that must be specified by the State prior to closure. The plan must include assurances that the residents will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

In the preamble of the February 18, 2011 interim final rule, we expressed our expectation that the closure plan would include sufficient detail to identify clearly the steps the facility would take, and would specify the individual responsible for ensuring the steps were successfully carried out (76 FR 9507). We note that we inadvertently omitted language regarding the statutory requirement at section 1128I(h)(1)(C) of the Act for State approval of the plan. We are correcting the language accordingly in section § 483.75(r)(3) of the regulations text in this final rule. The comments we received on this provision and our responses are set forth below.

Comment: Several commenters suggested that the final rule include regulations text specifying the minimum requirements for the facility closure plan, including information on transfer and discharge rights.

Response: We appreciate the commenter's suggestion; however, we do not believe it is necessary to include specific requirements for the plan in the regulation text. We want to allow each LTC facility the flexibility to develop a plan that would most effectively protect the residents' health, safety, and well-being. We note that we included detailed examples of elements of a closure plan in the preamble of the February 18, 2011 interim final rule (76 FR 9507). In addition, we intend to issue further guidance regarding the elements of a closure plan subsequent to the publication of this final rule.

Comment: One commenter recommended that CMS require the facility administrator to share the required relocation plan with residents and family members, as well as making it available upon request and/or publish the plan on State government nursing home information Web sites.

Response: We appreciate the commenter's suggestion. However, we do not believe that sharing the facility's relocation plan with residents would be appropriate, since the plan includes information that does not directly pertain to the health, safety, and well-being of the residents (for example, continuation of appropriate staffing levels and paychecks at the facility; method for communicating with staff and/or unions; and ongoing provision of necessary supplies, for example, food, linens, and utilities). The facility must meet its obligation set out at existing § 483.12(a)(4), ''Notice before transfer,'' to provide notice to the resident before the transfer or discharge of the resident. Our requirements at existing § 483.12(a)(6), ''Contents of the notice,'' specifically set out what must be included in the notice of transfer given to residents and, if known, a family member or legal representative. Since the transfer and discharge requirements are tailored specifically to each resident's unique needs, we believe that the required information will sufficiently address the commenter's concerns.

Additionally, the Nursing Home Compare Web site is a tool available to individuals looking for updated comparative information regarding functioning LTC facilities; this information can be utilized during the relocation process, and is available online at: *http://www.medicare.gov/nhcompare/include/datasection/questions/proximitysearch.asp?bhcp=1*.

Comment: Some commenters expressed concern that CMS was requiring the facility closure plan to include a commitment to retain and pay employees at the facility until it was closed (76 FR 9507). In particular, the commenters were concerned that the administrator might be held accountable for civil monetary penalties for any failure to adequately staff and pay employees. The commenters observed that unless the facility administrator was also the owner, the administrator generally would not have authority over, or access to, the funds that would be used to pay staff.

Response: While we expect the LTC facility administrator will be able to identify the necessary steps for a successful transfer of the residents, we note that the contents of the closure plan described in the preamble of the February 18, 2011 interim final rule were examples, not requirements (as incorrectly characterized by the commenter). Additionally, as mentioned in the preamble of the February 18, 2011 interim final rule, we expect that the closure plan include sufficient detail to clearly identify the steps the facility would take, and the individual responsible for ensuring the steps are successfully carried out, such as continuation of appropriate staffing levels, and paychecks at the facility. We intend to provide more detail on the contents of the closure plan in the interpretive guidance.

Comment: Several commenters requested clarification as to how a resident would be assessed for transfer to either an LTC facility or other community and home-based settings. Additionally, one commenter requested clarification regarding what would happen if admission to any of the settings deemed most appropriate for the resident were denied.

Response: We believe existing requirements at § 483.20(l), ''Discharge summary,'' should sufficiently address the commenter's concerns regarding how a resident would be assessed for transfer. According to those requirements, when the facility anticipates discharge, a resident must have a discharge summary that includes a final summary of the resident's status to include the elements in the comprehensive assessment of a resident's needs located in § 483.20(b). Section 483.20(l) also requires a post-discharge plan of care to be developed with the participation of the resident and his or her family. The plan of care will assist the resident with adjusting to his or her new living environment.

Additionally, § 483.75(r)(3) requires the LTC facility to include in the notice, the plan for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, that has been approved by the State, including

assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident. If admission to any of the settings deemed most appropriate for the resident were denied, the facility would still be responsible for locating another setting comparable in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of the resident, in order to comply with the requirements of this regulation.

Comment: One commenter recommended that CMS require that SNFs and NFs give residents, to the extent possible, an opportunity to visit facilities in advance so that they can choose the facility they would like to move.

Response: This regulation does not prohibit residents of a SNF or NF from visiting other facilities in advance. Additionally, existing regulations at § 483.12(a)(7), state that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. The facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence. Some examples of orientation may include trial visits, if possible, by the resident to a new location; orienting staff in the receiving facility to the resident's daily patterns; and reviewing with staff routines for handling transfer and discharges in a manner that minimizes unnecessary and avoidable anxiety or depression for the resident.

Comment: One commenter suggested that the facility's closure plan include a requirement to ensure that other nursing homes, including those owned by the same company as the facility that is closing, do not have access to a resident's record in order to ''cherry pick'' private pay residents or those with lighter care needs. Additionally, one commenter suggested that the facility's closure plan include information on how residents may contact the State's long-term care ombudsman and access CMS's Nursing Home Compare Web site since the updated data planned for the site will increase its value as a tool for residents to select an alternate nursing home in the event of a facility closure.

Response: The selection of an alternate facility is a decision collectively made by the resident (or their responsible party) and the care planning team. We believe that the provision at § 483.75(r)(3), which requires the written notice to assure residents that they will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident, adequately addresses the commenter's concerns. In addition, to ensure that the residents' rights are protected, § 483.75(r)(1) requires the ombudsman to be contacted as part of the closure notice. Under the Federal Older Americans Act, every State is required to have an Ombudsman Program that addresses complaints and advocates for improvements in the LTC system (*http://www.ltcombudsman.org/*).

Comment: Several commenters offered suggestions to CMS on what should be included in the SOM regarding the implementation guidelines for this regulation. One commenter suggested that CMS include in the SOM that nursing home residents displaced due to a facility closure be provided with information about and access to home and community-based setting options as appropriate.

Another commenter suggested that CMS provide additional guidance to State Survey Agencies regarding how to use monitors and temporary managers more effectively in facility closure situations. Additionally, one commenter recommended that the SOM should include guidance related to timeframes for completion of all paperwork assuring successful resident relocation. Another commenter recommended that CMS include guidance regarding post-transfer assessments of the residents' emotional health. The commenter stated that an assessment would ensure that evaluating the success of the residents relocation would not be limited to the mere physical move itself, but would also consider the residents' psychosocial adjustment.

Response: We appreciate the commenters' suggestions regarding guidance for surveyors. We will consider these comments when making changes to the interpretive guidance.

E. Facility Closure (§ 483.75(s))

At § 483.75(s), we require that the facility have in place policies and procedures that will ensure the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure. In the preamble to the February 18, 2011 interim final rule, we noted that the facility will not be sanctioned for noncompliance with this rule; however, it may be cited for a deficiency during the survey process (76 FR 9507). We are finalizing these provisions as set forth in the interim final rule.

The comments we received on this provision and our responses are set forth below.

Comment: One commenter suggested that CMS withdraw § 483.75(s) from the final rule due to its inconsistency with the Congressional intent, which is to hold the administrator, not the facility, accountable for failure to provide proper notification in advance of a facility closure. Alternatively, a few commenters suggested that the final rule should establish a process for sanctioning facility owners in addition to administrators who do not comply with the closure provisions. Some commenters suggested that the provision was unnecessary because when a facility decides to close, the rule requires the administrator to prepare the closure plan and seek appropriate approvals, regardless of whether the facility has policies and procedures.

Response: As we stated in the preamble of the February 18, 2011 interim final rule, while this provision is not explicitly required by section 1128I(h) of the Act, we believe that it is implicitly authorized by this section of the Act, which set forth requirements for LTC facility closures. Moreover, issuance of this regulatory provision is permitted by the general rulemaking authority of sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act, which explicitly permits the Secretary to issue rules relating to the health, safety, and well-being of residents, as well as rules concerning physical facilities. Additionally, § 483.75(d), Governing body, requires the facility to have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing polices regarding the management and operation of the facility. Therefore, the facility is responsible for the overall functioning of the LTC facility, though it will not be sanctioned for noncompliance with this rule, a facility that does not meet the requirements at § 483.75(s) could be cited for a deficiency during the survey process. We continue to believe this level of added protection will ensure that the intent of the Congress is implemented and that residents receive adequate notice before a facility closure.

F. Transfer of Residents, or Closure of the Facility and Transfer of Residents (§ 488.426)

We revised § 488.426, Transfer of residents, or closure of the facility and transfer of residents, at § 488.426(b) to include a cross-reference to the new requirements at § 483.75(r). We also

added a new requirement at § 488.426(c) to address the required notifications when a facility closes. We are finalizing these provisions set forth in the interim final rule.

The comments we received on this provision and our responses are set forth below.

Comment: A few commenters mentioned that the Affordable Care Act requires the notices issued by administrators to include a closure plan that has been approved by the State; however, the regulation does not establish any process for State review and action on facility closure plans. It was suggested that the final rule establish these procedures under which States would review and act on proposed closure plans. The commenter suggested that CMS prescribe in regulations (rather than through sub-regulatory guidance in the SOM) that States will be required to ensure safe relocation of residents following their facility's closure and that CMS has authority to enforce the requirements directly.

Response: Section 1128(h)(1)(C) of the Act states any individual who is the administrator of a facility must include in the notice a plan for the transfer and adequate relocation of the residents of the facility by a specified date prior to closure that has been approved by the State, including assurances that the residents will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident. In accordance with the statute, States are required to approve the plan. We expect the State Survey Agency to manage the approval process. Thus, we do not believe it is necessary to add these requirements to the regulation, but will address it in the SOM. In this final rule, we have revised the language at § 483.75(r)(3) of the regulations text to incorporate the explicit requirement. The regulation text will now read, ''Include in the notice the plan, *that has been approved by the State,* for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the resident would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.''

G. Administrator Sanctions: Long-Term Care Facility Closures (§ 488.446)

As required by section 6113 of the Affordable Care Act, we added a new § 488.446, which will potentially subject to sanctions any administrator of a facility that fails to comply with the requirements at § 483.75(r). We are finalizing these provisions as set forth in the interim final rule. The comments we received on this provision and our responses are set forth below.

Comment: Several commenters had concerns that an owner of a nursing facility could arrange for the closure of the facility after the prescribed timeframe for notification, without knowledge or involvement of the administrator, thus exposing the facility administrator to the sanction when they were not aware of the owner's plans to close the facility. Additionally, commenters requested that CMS consider waiving sanctions for administrators that are hired after the decision is made to close a facility.

Response: We agree with the commenters that the administrator may encounter a situation where adequate time to submit a notification of closure to the specified entities, as required by § 483.75(r)(1), was not given. In some cases, an administrator may not have had control over implementing the notice procedures. For example, an administrator may have been hired to oversee the facility's impending closure, although he or she was not present when the decision was made to close the facility. The administrator may have been employed less than 60 days prior to closure. Another possibility is that the facility owner may not have even informed the new administrator of plans to close the facility. However, the lack of previous involvement does not relieve the administrator (at the time of closing) of the responsibility for implementing the plan and the procedures as required to the extent possible. In these instances, the administrator would be expected to provide the closure notice as soon as possible and begin implementing the plan for closure, working with the State Survey Agency for transferring the residents. The administrator hired to assist with closure would be expected to implement the closure plan and work closely with the State and CMS to assure that appropriate procedures were implemented. From the time that the administrator was made aware of the closure, he or she would be responsible for compliance with this regulation.

Additionally, while it was not mandated by the Affordable Care Act, we have added § 498.5(m), which allows for appeal rights of an individual who is the administrator of a SNF or NF. Therefore, if an individual who is the administrator of a SNF or NF is dissatisfied with the decision of CMS to impose sanctions, he or she would be entitled to a hearing before an Administrative Law Judge (ALJ), to request the Departmental Appeals Board review of the hearing decision, and to seek judicial review of the Board's decision.

Comment: A few commenters expressed concerns about the Civil Monetary Penalty (CMP) levels being too low, considering that section 6113 of the Affordable Care Act permits fines of up to $100,000 and subsequent exclusion from participating in any Federal healthcare programs and suggested increasing the minimum penalty. Another commenter recommended enforcing CMPs from $100.00 up to $1,000.00, multiplying the amount of the CMP by the number of residents who were admitted after written notice of closure was provided to the State. Another commenter suggested that those facilities that committed multiple offenses should incur all penalties to the fullest extent possible, while another commenter requested clarification and/or criteria for what would constitute multiple offenses that would result in increased amounts of CMPs.

Response: We believe that the Congress intended for CMS to use sanctions as a method to ensure that the statutory requirements are enforced. The statutory language that was enacted stated ''up to $100,000.'' This language established a maximum limit, but afforded CMS the discretion to determine the actual amount of the sanctions. Due to the many possible combinations of violations that could be cited, the amount of the penalty will be determined based on the survey findings. For example, if it is determined that an administrator of record completely fails to take the necessary and timely actions to adhere to the closure requirements, thus potentially causing harm to residents, then the administrator could be subject to additional CMPs. Any sanctions that have been levied against an administrator could also be reviewed by the State's licensing agency for possible disciplinary action, including suspension or termination of the administrator's license, in those States that provide for the licensing of LTC facility administrators. Interpretive guidelines are being developed that will establish criteria for determination of its CMP amounts.

Comment: One commenter suggested that CMS and State licensing agencies consider sharing a percentage of any resultant CMP proceeds with any parties that may have directly been injured

because of failures to notify and/or plan for relocation,

Response: Existing requirements at § 488.433, ''Civil money penalties: Uses and approval of civil money penalties imposed by CMS,'' state that 10 percent of the collected CMP funds that are required to be held in escrow and that remain after a final administrative decision will be deposited with the Department of Treasury. The remaining 90 percent of the collected CMP funds that are required to be held in escrow and that remain after a final administrative decision may not be used for survey and certification operations, but must be used entirely for activities that protect or improve the quality of care for residents. These activities must be approved by CMS and may include, but are not limited to: support and protection of residents of a facility that closes, time-limited expenses incurred in the process of relocating residents to home and community-based settings or another facility when a facility is closed or downsized pursuant to an agreement with a State Medicaid agency, facility improvement initiatives approved by CMS, such as, joint training or facility staff and surveyors or technical assistance for facility implementing quality assurance and performance improvement program, when facilities have been cited by CMS for deficiencies in the applicable requirements. While the collected CMPs are not dispersed to the affected parties directly, the money will be used to protect and improve the quality of care for residents. Therefore, we believe they ultimately will derive benefits from the collected CMP funds.

Comment: A few commenters requested clarification regarding what would constitute ''unjustified harm'' to the resident, family, and visitors, as mentioned in the preamble to the February 18, 2011 interim final rule with comment period cited as a justification for harsher administrator sanctions (75 FR 9507). One commenter stated that it was not clear how or why the administrator would have any legal obligation to third parties such as family members or visitors. A commenter suggested that we remove the language in the preamble suggesting that the administrator could be subject to additional CMPs if it was determined that family members and visitors of the resident experienced ''unjustified harm'' (75 FR 9507).

Response: We are clarifying that it was not our intention to make an LTC facility administrator personally liable to family members and visitors for harm resulting from a failure to notify. We used a technical term to describe deficiencies; however, this terminology does not create either a Federal or State standard of care. We do not believe that any level of harm, whether based on intent or negligence, is acceptable.

H. Period of Continued Payments (§ 488.450(c))

We revised § 488.450 by adding a new requirement to provide that, in the case of a facility closure, the Secretary may, as appropriate, continue to make payments under this title with respect to residents of an LTC facility that has submitted a notification of closure, during the period beginning on the date such notification is submitted and ending on the date, which the resident is successfully relocated. We note that in this final rule, we are correcting a typographical error in the regulations text. The provision in section § 488.450(c)(2) will now read, '' * * * ending on the date on which the residents are successfully relocated.''

The comments we received on this provision and our responses are set forth below.

Comment: One commenter suggested that CMS provide a procedure for residents, their representatives, citizen advocacy groups, and the State LTC ombudsman to comment on when payments can be terminated.

Response: We appreciate the commenter's concern regarding termination of payment in the event of a facility closure. However, we do not believe that any changes in this aspect of the rule are needed because the statute and our regulatory requirements address the concerns of the commenter. Section 1128I(h)(3) of the Act and requirements at § 488.450(c), authorize the Secretary to continue to make payments with respect to residents of an LTC facility that has submitted a notification of closure during the period beginning on the date such notification is submitted to CMS and ending on the date on which all residents are successfully relocated. Therefore, CMS will determine, as appropriate, whether to continue to make payments with respect to residents of an LTC facility that has submitted a notification of closure as required at § 483.75(r). We believe this matter is purely operational and not amenable to the discretion implied by an opportunity for public comment. If residents have concerns regarding a facility closure and relocation process, we would encourage them to make their concerns known to the State LTC Ombudsman.

I. Notice to CMS (§ 489.52(a))

We revised § 489.52(a)(1) to provide an exception for SNFs, and by adding a new requirement specific to SNF notifications to CMS. Specifically, at § 489.52(a)(2), we specify that a SNF provider that wishes to terminate its agreement must send CMS written notice of its intent at least 60 days prior to the date of closure, in accordance with § 483.75(r)(1)(i).

We did not receive any public comments regarding this provision. Therefore, we are finalizing the revisions of § 489.52(a)(2) as set forth in the interim final rule.

J. Skilled Nursing Facility Closure (§ 489.53(d)(3))

We added a new requirement at § 489.53(d)(3), to state that when CMS terminates a facility's participation under Medicare or Medicaid, CMS will determine the date of the required notifications. We also revised § 489.53(d)(1) to reflect this change.

We did not receive any public comments regarding this provision. Therefore, we are finalizing § 489.53(d)(1) and (d)(3) as set forth in the interim final rule.

K. Exceptions to Effective Date of Termination (§ 489.55)

We added a new requirement at § 489.55 that authorizes the Secretary to continue to make payments to the SNF or, for a NF, to the State, as the Secretary considers appropriate, during the period beginning at the time the notification is submitted and until the resident is successfully relocated. In this final rule, we are correcting a typographical error in the regulations text at § 489.55(a)(1). The provision will now read, ''Inpatient hospital services (including inpatient psychiatric hospital services) and post hospital extended care services * * * ''

The comments we received on this provision and our responses are set forth below.

Comment: A few commenters recommended CMS consider the role economic factors play in a decision to close, the potential impact of discontinued funding to resident care and services during the closure process, and to support ongoing policy for continued payment through the 60-day notice period or until the last resident is successfully relocated, whichever is earlier.

Response: We agree with the need to provide continued funding until all of the residents are successfully relocated. As stated in a previous response, section 1128I(h)(3) of the Act authorizes the Secretary to continue to make payments with respect to residents of an LTC facility that has submitted the required notification of closure to CMS.

L. Scope and Applicability (§ 498.3)

We added a new requirement at § 498.3(a)(2)(iv) to clarify that CMS may also impose sanctions on NF administrators for noncompliance with § 483.75(r). We also added a new requirement at § 498.3(a)(3)(ii) to indicate that the appeals process applies to NFs as well as SNFs. In addition, a new requirement was added at § 498.3(b)(18) to indicate that a sanction imposed on a SNF or NF administrator for noncompliance with the requirements set out at § 483.75(r) constitutes an initial determination of the agency.

We did not receive any public comments regarding this provision. Therefore, we are finalizing the revisions at § 498.3(a)(2)(iv) as set forth in the interim final rule. However, we are correcting a typographical error at § 498.3(a)(3), to include, ''(iii)'' when referring to Part 488, subpart E (§ 488.330(e)) and subpart F (§ 488.446)—for SNFs and NFs and their administrators.

M. Appeal Rights (§ 498.5)

We added a new requirement at § 498.5(m), to establish appeal rights for administrator sanctions for noncompliance with the requirements set out at § 483.75(r).

We did not receive any public comments regarding this provision. However, we are making a technical correction at § 498.5(m) to include, ''or NF'' when referring to the appeal rights of an individual who is the administrator. We had included the term ''NF'' in the February 18, 2011 interim final rule's preamble language on this provision, but inadvertently omitted it from the corresponding regulations text.

IV. Provisions of the Final Regulations

We are adopting as final the requirements set forth in the interim final rule published in the **Federal Register** on February 18, 2011 (76 FR 9503), with the following changes:

- We are revising § 483.12(a)(8) and § 483.75(r)(1) to clarify that the facility must submit written notification of an impending closure to ''the State Survey Agency'' instead of ''the Secretary''.
- We note that we inadvertently omitted language regarding the statutory requirement at 1128I(h)(1)(C) for State approval of the plan. We are correcting the language accordingly in section § 483.75(r)(3) of the regulations text in this final rule.
- We are correcting a typographical error in the provision regarding the period of continued payments at § 488.450(c)(2), which will now read, '' * * * ending on the date on which the residents are successfully relocated.''
- We are correcting a typographical error in the provisions regarding Exceptions to the effective date of termination at § 489.55(a)(1), which will now read, ''Inpatient hospital services (including inpatient psychiatric hospital services) and post hospital extended care services * * * ''
- We are correcting a typographical error at § 498.3(a)(3), to include, ''(iii)'' when referring to Part 488, subpart E (§ 488.330(e)) and subpart F (§ 488.446)—for SNFs and NFs and their administrators.
- We are making a technical correction at § 498.5(m) to include, ''or NF'' when referring to the appeal rights of an individual who is the administrator. We included NFs in the preamble language and inadvertently omitted it from the regulation text.
- We inadvertently omitted a citation from all authority citations in the regulation text. We are correcting that error by adding ''1320a–7j'' to all authority citations.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We requested public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

The revisions at § 483.12(a)(8) require any individual who is the administrator of the facility to submit to the Secretary, the State LTC ombudsman, residents and their legal representatives, or other responsible parties, written notification of an impending closure at least 60 days prior to such closure; or not later than the date that the Secretary deems appropriate in the case of a facility where the Secretary terminates the facility's participation under this title.

Current regulations at § 483.12(a)(5) require notification of transfer or discharge to a resident and, if known, a family member or legal representative, in writing. Except in certain specified circumstances, notification must be made at least 30 days prior to transfer or discharge. Facility closure is not a circumstance that permits a facility to make notification in fewer than 30 days. Although the requirement extends the time period for notification from 30 days to 60 days (or a date determined by the Secretary in case of CMS termination of the facility), we do not believe the change in the time period for reporting imposes any additional burden. In addition, notification of transfer or discharge to residents and their representatives is already a usual and customary business practice. Therefore, in accordance with 5 CFR 1320.3(b)(2), we will not include this activity in the ICR burden analysis.

Although there are no existing Federal regulatory requirements for LTC facilities to notify other individuals or entities of an impending closure, according to feedback to CMS from State surveyors for LTC facilities, nearly all States already require LTC facilities to notify the State within 30 to 90 days. Because we have found that notifications of impending closure are a standard business practice for most LTC facilities, we believe that this requirement would impose burden on only a small number of facilities.

Each facility that does not already notify the State and the State LTC ombudsman must develop a process for notifying these entities. We estimate that the burden associated with complying with this requirement would be due to the resources required to develop a process for notifying the State and the State LTC ombudsman and the time it takes to notify those entities. We expect that the notification process would involve the administrator of the facility and administrative support person and an attorney to review the plan.

The revisions at § 483.75(r)(2) require that the administrator of the facility ensure that the facility does not admit any new residents on or after the date written notification is submitted. We do not anticipate any ICR burden associated with this requirement.

Section 483.75(r)(3) requires the administrator of the facility to include in the notice the plan for the transfer and adequate relocation of the residents

of the facility by a date that is specified by the State prior to closure, that has been approved by the State, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

Section 483.75(s) requires the facility to have in place policies and procedures to ensure that the administrator's duties and responsibilities include the provision of the appropriate notices in the event of a facility closure.

In our experience, based on feedback to CMS from State surveyors of LTC facilities, most facilities already have plans for transfer of residents, regardless of whether closure of the facility is expected. For example, most facilities have plans for transfer of residents to another facility in the event of an emergency. Also, based on our experience, nearly all facilities anticipating closure develop plans for the relocation of residents and other closure-related activities. Many States require these plans. For example, Vermont requires that the State licensing agency and the LTC ombudsman be notified by the administrator of the facility 90 days prior to the proposed date of closure. Additionally, the facility administrator is required to provide to the State licensing agency and LTC ombudsman a written transfer plan 60 days prior to closure. See *http://www.sph.umn.edu/hpm/nhregsplus/NH%20Regs%20by%20Topic/NH%20Regs%20Topic%20Pdfs/Admission/admission_transfer_and_discharge_rights_ALL_STATES.pdf.*

Because we have found that transfer plans are a standard business practice for most LTC facilities, we believe that this requirement would impose burden on only a small number of facilities.

Each facility that does not already have a plan in place must develop a plan for the transfer and adequate relocation of residents of the facility. We estimate that the burden associated with complying with this requirement would be due to the resources required to develop and review a new plan or, if necessary, modify an existing plan for the transfer of residents in the event of facility closure. We expect that development of a plan would involve the administrator of the facility, an administrative support person, and an attorney to review the plan.

LTC facilities are currently required to have a plan under § 483.12 for discharge and transfer of residents. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. Therefore, we anticipate that, on average, it will take 3 hours to develop the plan, 1 hour to ensure that the administrator's duties include policies and procedures relating to facility closures, 2 hours for an administrative support person to prepare the document(s), and 1 hour for an attorney to review the document(s), for a total estimated burden of 7 hours per facility. We also believe that the burden would remain approximately the same for the first year and beyond.

Currently, there are 15,720 LTC facilities in the U.S. Based on an hourly rate of $58.17 for a nursing home administrator, we estimate that development of the plan and incorporating facility closure policies and procedures into the administrator's duties would cost $3,657,729.60 (15,720 facilities × 4 hours per facility) × $58.17 per hour). Based on an hourly rate of $20.11 for an administrative assistant, we estimate that preparing the plan documents would cost $632,258.40 ((15,720 facilities × 2 hours per facility) × $20.11 per hour). Finally, based on an hourly rate of $82.50 for an attorney, we estimate that reviewing the plan document would cost $1,296,900.00 ((15,720 facilities × 1 hour per facility) × $82.50 per hour). The salary estimates include 33 percent of the mean hourly rate for overhead and fringe benefits (Source: BLS.gov). Therefore, we anticipate that the total burden associated with this provision is $5,586,888.00 (15,720 facilities × 7 hours per facility at $355.40).

If you comment on these information collection and recordkeeping requirements, please submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–3230–F Fax: (202) 395–6974; or

Email: *OIRA_submission@omb.eop.gov*

VI. Regulatory Impact Analysis

A. Statement of Need

Executive Order 13563 directs agencies to consider and discuss qualitatively values that are difficult to quantify, including equity, human dignity, fairness and distributive impacts. This final rule will implement section 1128I(h) of the Act (as amended by section 6113 of the Affordable Care Act), which mandates specific procedures in the event of a closure of a nursing home. LTC facility closure procedures have implications related to access to care, the quality of care, and the overall health of residents. These procedures help protect the resident, the resident's family, and visitors because they require the facility to provide an organized plan that allows the resident, family, and visitors to make the necessary adjustments within a reasonable time frame.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not qualify as a major rule as the estimated economic impact. We estimate that these requirements will cost $355.40 (5,586,888.00/15,720) per facility the first year and each year thereafter. Due to the increase in the number of long-term care facilities, we recalculated the economic impact of the February 18, 2011 IFC and have determined that it has slightly increased by $2,488 in total. (The number of long-term care facilities has increased slightly since publication of the interim final rule.) As a result, the economic impact for the February 18, 2011 IFC is $5,586,888.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.0 million to $34.5 million in any 1 year). For purposes of the RFA, most physician

practices, hospitals, and other providers are small entities, either by nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of less than $7.0 to $34.5 million in any 1 year). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's Web site at *http://www.sba.gov/about-sba-services/7591.* A rule has a significant economic impact on the small entities it affects, if it significantly affects their total costs or revenues. Under statute, we are required to assess the compliance burden the regulation will impose on small entities. Generally, we analyze the burden in terms of the impact it will have on entities' costs if these are identifiable or revenues. As a matter of sound analytic methodology, to the extent that data are available, we attempt to stratify entities by major operating characteristics such as, size and geographic location. If the average annual impact on small entities is 3 to 5 percent or more, it is to be considered significant.

We estimate that these requirements will cost $355.40 ($5,586,888.00/15,720 facilities) per facility initially and $355.40 ($5,586,888.00/15,720 facilities) thereafter. This clearly is far below 1 percent of total facility costs or revenues; therefore, we do not anticipate it to have a significant impact. We do not have any data related to the number of LTC facilities that have facility closure plans in place; however, we are aware through our experience with LTC facilities and the survey process that most facilities have a plan for closure either because they are required to have a plan in place at the State level or because of their understanding that this is a standard business practice.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For the purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule would only affect those institutions that meet the definition of a ''facility'' in section 1128I(a) of the Act; that is, SNFs and NFs. Therefore, the Secretary has determined that this final rule would not have any impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This rule would not have a significant impact on the governments mentioned or on private sector costs. The estimated economic effect of this rule is $5,586,888.00 the first year and $5,586,888.00, thereafter. These estimates are derived from our analysis of burden associated with these requirements in section IV, ''Collection of Information Requirements.''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have any effect on State or local governments.

C. Anticipated Effects

1. Effects on LTC Facilities

The purpose of this final rule is to ensure that, among other things, in the case of a facility closure, any individual who is the administrator of the facility will provide written notification of the closure and the plan for the relocation of residents at least 60 days prior to the impending closure or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate. This rule will protect residents' health and safety and make the transition to closure as smooth as possible for residents, as well as family members and facility staff.

2. Effects on Other Providers

This rule is expected to allow for a smoother transition when a facility closes. It requires facilities and facility administrators to prepare in advance for closure so that, in the event of a closure, the facility is equipped to protect resident rights and continue to provide quality care to residents who must be relocated. This final rule will also improve coordination of care between the transferring LTC facility and the chosen destination setting. For example, if a resident is transferred from an LTC facility to a non-LTC facility such as an assisted living facility, we do not believe that non-LTC facilities would experience any increase in administrative burden as a result of these provisions. In fact, we anticipate that the receiving facility would benefit from increased coordination with the transferring LTC facility.

3. Effects on the Medicare and Medicaid Programs

This rule will require that the State and CMS be notified in the case of a facility closure and provides them with the ability to make determinations regarding the timing of termination of provider agreements and continuation of payments to LTC facilities. This rule will also support efforts directed toward broad-based improvements in the quality of health care furnished by Medicare and Medicaid providers.

D. Alternatives Considered

We considered the effects of not addressing specific requirements for the notification of facility closures in LTC facilities, although these requirements are statutory and only allow limited discretion on the part of the Secretary. However, we strongly believe that to improve quality and ensure consistency in the provision of care in LTC facilities, it is important to ensure that residents rights are protected in LTC facilities and that they are relocated appropriately, taking into consideration the needs, choice, and best interest of each resident should a facility closure take place. We expect that these requirements will result in improvement in the quality of services provided to LTC residents when they need to be involuntarily relocated as a result of the closures.

E. Conclusion

This final rule ensures that, among other things, in the case of a facility closure, any individual who is the administrator of the facility provide written notification of the closure and the plan for the relocation of residents at least 60 days prior to the impending closure or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate.

It is consistent with the requirements set forth in section 6113 of the Affordable Care Act and the Administration's efforts toward broad-based improvements in the quality of health care furnished by Medicare and Medicaid providers.

This final rule clarifies the responsibility of the administrator of a facility (which is to ensure that the designated parties are notified of an impending closure within a specified timeframe), and identifies penalties for non-compliance. It also clarifies the responsibility of the administrator of the facility to ensure that no new residents are admitted after written notice is submitted and that the notice of closure must include a plan for transfer and adequate relocation to another facility. These facilities must take into

consideration the needs, choice, and best interests of each resident.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 42 CFR Parts 483, 488, 489, and 498, which was published at 76 FR 9503 on February 18, 2011, is adopted as final with the following changes:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7j, and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

■ 2. Section 483.12 is amended by revising paragraph (a)(8) to read as follows:

§ 483.12 Admission, transfer and discharge rights.

(a) * * *

(8) *Notice in advance of facility closure.* In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.75(r).

* * * * *

■ 3. Section 483.75 is amended by revising paragraphs (r)(1) introductory text and (r)(3) to read as follows:

§ 483.75 Administration.

* * * * *

(r) * * *

(1) Submit to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure:

* * * * *

(3) Include in the notice the plan, that has been approved by the State, for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

* * * * *

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 4. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a–7j, and 1395hh); Pub. L. 110–149, 121 Stat. 1819.

Subpart F—Enforcement of Compliance for Long-Term Care Facilities With Deficiencies

■ 5. Section 488.450 is amended by revising paragraph (c)(2) to read as follows:

§ 488.450 Continuation of payments to a facility with deficiencies.

* * * * *

(c) * * *

(2) *Facility closure.* In the case of a facility closure, the Secretary may, as the Secretary determines appropriate, continue to make payments with respect to residents of a long-term care facility that has submitted a notification of closure during the period beginning on the date such notification is submitted to CMS and ending on the date on which the residents are successfully relocated.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 6. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1128I and 1819, 1820(e), 1861, 1864(m), 1866, 1869, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7j, 1351i73,1395x, 1395aa(m), 1395cc, 1395ff, and 1395hh).

Subpart E—Termination of Agreement and Reinstatement After Termination

■ 7. Section § 489.55 is amended by revising paragraph (a)(1) to read as follows:

§ 489.55 Exceptions to effective date of termination.

(a) * * *

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and post hospital extended care services (except as specified in paragraph (b) of this section with respect to LTC facilities) furnished to a beneficiary who was admitted before the effective date of termination; and

* * * * *

PART 498—APPEAL PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 8. The authority citation for part 498 is revised to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7j, and 1395hh).

Subpart A—General Provisions

■ 9. Section 498.3 is amended by revising paragraph (a)(3) to read as follows:

§ 498.3 Scope and applicability.

(a) * * *

(3) The following parts of this chapter specify the applicability of the provisions of this part 498 to sanctions or remedies imposed on the indicated entities or individuals:

(i) Part 431, subpart D—for nursing facilities (NFs).

(ii) Part 488, subpart E (§ 488.330(e))—for SNFs and NFs.

(iii) Part 488, subpart E (§ 488.330(e)) and subpart F (§ 488.446)—for SNFs and NFs and their administrators.

* * * * *

■ 10. Section 498.5 is amended by revising paragraph (m) to read as follows:

§ 498.5 Appeal rights.

* * * * *

(m) *Appeal rights of an individual who is the administrator of a SNF or NF.* An individual who is the administrator of a SNF or NF who is dissatisfied with

the decision of CMS to impose sanctions authorized under § 488.446 of this chapter is entitled to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 23, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 20, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Editorial Note: This document was received at the Office of the Federal Register on March 14, 2013.

[FR Doc. 2013–06276 Filed 3–15–13; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 10

[PS Docket No. 07–287; DA 13–280]

The Commercial Mobile Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to change the name of the Commercial Mobile Alert System (CMAS) to Wireless Emergency Alerts (WEA). This is intended to conform the name used for the wireless alert system regulated under Commission rules to the name used by the major commercial mobile service providers that participate in that system.

DATES: *Effective:* March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Lisa.Fowlkes@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Order* in PS Docket No. 07–287, DA 13–280, adopted on February 25, 2013, and released on February 25, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

1. The Warning Alert and Response Network Act (WARN Act) required the Commission to adopt the technical requirements necessary for commercial mobile service providers to transmit emergency alerts, if they elect to transmit those alerts. In the rulemaking proceeding that the Commission launched to implement this WARN Act requirement, the Commission used the name Commercial Mobile Alert System (CMAS) to describe the system that commercial mobile service providers could use to transmit emergency alerts to the public. The regulations governing this system are codified in part 10 of the Commission's rules and also refer to this system as CMAS. Recently, however, an increasing number of the commercial mobile service providers that participate in the system are referring to it as Wireless Emergency Alerts (WEA) in the information that they provide to their subscribers.

2. In this *Order,* the Commission revises part 10 of its rules by changing the name ''Commercial Mobile Alert System'' to ''Wireless Emergency Alerts'' throughout the part and by changing references to ''CMAS'' to ''WEA.'' These revisions will conform the name used for the wireless alert system regulated under our rules to the name used by the major commercial mobile service providers that participate in that system. Accordingly, the rules will more accurately reflect common parlance and thus reduce confusion.

3. The revisions adopted in this *Order* and set forth below merely change the name of the commercial mobile alert service regulated under Part 10 of the Commission's rules. These revisions are thus ministerial, non-substantive, and editorial. Accordingly, the Commission found good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose.

4. Because the rule revisions will not affect the substantive rights or interests of any licensee, the Commission also found good cause to make these non-substantive, editorial revisions of the rules effective upon publication in the **Federal Register.**

5. The Commission's Public Safety and Homeland Security Bureau adopted this *Order* pursuant to its delegated authority to ''conduct[] rulemaking proceedings'' in matters pertaining to public safety and homeland security. Pursuant to § 0.392 of the Commission's rules, the Bureau Chief is ''delegated authority to perform all functions of the Bureau, described in . . . § 0.191'' with certain specified exceptions. None of those exceptions are present here.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

6. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Final Regulatory Flexibility Analysis

7. Because the Commission adopted this *Order* without the publication of a notice of proposed rulemaking, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* does not require the Commission to prepare a regulatory flexibility analysis.

III. Ordering Clauses

8. Accordingly, *it is ordered that,* effective upon publication in the **Federal Register,** part 10 of the Commission's rules *is revised,* as set forth below, pursuant to the authority contained in sections 4(i), 5(c), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 155(c), and 303(r), and §§ 0.231(b) and 0.392(e) of the Commission's regulations, 47 CFR 0.191(e) and 0.392.

9. *It is further ordered* that the Secretary shall cause a copy of this *Order* to be published in the **Federal Register.**

10. *It is further ordered* that the Bureau *shall send* a copy of this *Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 10

Communications common carriers, Radio.

Federal Communications Commission.

David S. Turetsky

Chief, Public Safety and Homeland Security Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 10 as follows:

PART 10—WIRELESS EMERGENCY ALERTS

■ 1. The authority citation for Part 10 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606; sections 602(a), (b), (c), (f), 603, 604 and 606 of Pub. L. 109–347, 120 Stat. 1884.

■ 2. Revise the heading of Part 10 to read as set forth above.

■ 3. Section 10.2 is revised to read as follows:

§ 10.2 Purpose.

The rules in this part establish the requirements for participation in the voluntary Wireless Emergency Alerts system.

■ 4. Section 10.10 is amended by revising paragraphs (b), (c), (h), (i) and (j) to read as follows:

§ 10.10 Definitions.

* * * * *

(b) *Common Alerting Protocol.* The Common Alerting Protocol (CAP) refers to Organization for the Advancement of Structured Information Standards (OASIS) Standard CAP–V1.1, October 2005 (available at *http://www.oasis-open.org/specs/index.php#capv1.1*), or any subsequent version of CAP adopted by OASIS and implemented by the WEA.

(c) *Wireless Emergency Alerts.* The Wireless Emergency Alerts (WEA) system refers to the voluntary emergency alerting system established by this part, whereby Commercial Mobile Service Providers may elect to transmit Alert Messages to the public.

* * * * *

(h) *CMS provider Gateway.* The mechanism(s) that supports the ''C'' interface and associated protocols between the Alert Gateway and the CMS provider Gateway, and which performs the various functions associated with the authentication, management and dissemination of WEA Alert Messages received from the Alert Gateway.

(i) *CMS provider infrastructure.* The mechanism(s) that distribute received WEA Alert Messages throughout the CMS provider's network, including cell site/paging transceivers and perform functions associated with authentication of interactions with the Mobile Device.

(j) *Mobile Devices.* The subscriber equipment generally offered by CMS providers that supports the distribution of WEA Alert Messages.

■ 5. Section 10.11 is revised to read as follows:

§ 10.11 WEA implementation timeline.

Notwithstanding anything in this part to the contrary, a participating CMS provider shall begin an 18 month period of development, testing and deployment of the WEA in a manner consistent with the rules in this part no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.

■ 6. Revise the heading of Subpart B to read as follows:

Subpart B—Election To Participate in Wireless Emergency Alerts System

■ 7. Section 10.210 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2) and (b) to read as follows:

§ 10.210 WEA participation election procedures.

(a) A CMS provider that elects to transmit WEA Alert Messages, in part or in whole, shall electronically file with the Commission a letter attesting that the Provider:

* * * * *

(2) Commits to support the development and deployment of technology for the ''C'' interface, the CMS provider Gateway, the CMS provider infrastructure, and mobile devices with WEA functionality and support of the CMS provider selected technology.

(b) A CMS provider that elects not to transmit WEA Alert Messages shall file electronically with the Commission a letter attesting to that fact.

* * * * *

■ 8. Section 10.220 is revised to read as follows:

§ 10.220 Withdrawal of election to participate in WEA.

A CMS provider that elects to transmit WEA Alert Messages, in part or in whole, may withdraw its election without regulatory penalty or forfeiture if it notifies all affected subscribers as well as the Federal Communications Commission at least sixty (60) days prior to the withdrawal of its election. In the event that a carrier withdraws from its election to transmit WEA Alert Messages, the carrier must notify each affected subscriber individually in clear and conspicuous language citing the statute. Such notice must promptly inform the customer that he or she no longer could expect to receive alerts and of his or her right to terminate service as a result, without penalty or early termination fee. Such notice must facilitate the ability of a customer to automatically respond and immediately discontinue service.

■ 9. Section 10.230 is revised to read as follows:

§ 10.230 New CMS providers participating in WEA.

CMS providers who initiate service at a date after the election procedure provided for in § 10.210(d) and who elect to provide WEA Alert Messages, in part or in whole, shall file electronically their election to transmit in the manner and with the attestations described in § 10.210(a).

■ 10. Section 10.240 is amended by revising the section heading and paragraph (a) to read as follows:

§ 10.240 Notification to new subscribers of non-participation in WEA.

(a) A CMS provider that elects not to transmit WEA Alert Messages, in part or in whole, shall provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to new subscribers of its non-election or partial election to provide Alert messages at the point-of-sale.

* * * * *

■ 11. Section 10.250 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 10.250 Notification to existing subscribers of non-participation in WEA.

(a) A CMS provider that elects not to transmit WEA Alert Messages, in part or in whole, shall provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to existing subscribers of its non-election or partial election to provide Alert messages by means of an announcement amending the existing subscriber's service agreement.

(b) For purposes of this section, a CMS provider that elects not to transmit WEA Alert Messages, in part or in whole, shall use the notification language set forth in § 10.240 (c) or (d) respectively, except that the last line of the notice shall reference FCC Rule 47 CFR 10.250, rather than FCC Rule 47 CFR 10.240.

* * * * *

■ 12. Section 10.260 is revised to read as follows:

§ 10.260 Timing of subscriber notification.

A CMS provider that elects not to transmit WEA Alert Messages, in part or in whole, must comply with §§ 10.240 and 10.250 no later than 60 days following an announcement by the Commission that the Alert Aggregator/Gateway system is operational and capable of delivering emergency alerts to participating CMS providers.

■ 13. Section 10.270 is revised to read as follows:

§ 10.270 Subscribers' right to terminate subscription.

If a CMS provider that has elected to provide WEA Alert Messages in whole or in part thereafter chooses to cease providing such alerts, either in whole or in part, its subscribers may terminate their subscription without penalty or early termination fee.

■ 14. Section 10.280 is amended by revising the section heading to read as follows:

§ 10.280 Subscribers' right to opt out of WEA notifications.

* * * * *

■ 15. Section 10.320 is amended by revising paragraphs (c) and (f)(1) to read as follows:

§ 10.320 Provider alert gateway requirements.

* * * * *

(c) *Security.* The CMS provider gateway must support standardized IP-based security mechanisms such as a firewall, and support the defined WEA ''C'' interface and associated protocols between the Federal alert gateway and the CMS provider gateway.

* * * * *

(f) * * *

(1) The information must be provided 30 days in advance of the date when the CMS provider begins to transmit WEA alerts.

* * * * *

■ 16. Section 10.340 is revised to read as follows:

§ 10.340 Digital television transmission towers retransmission capability.

Licensees and permittees of noncommercial educational broadcast television stations (NCE) or public broadcast television stations (to the extent such stations fall within the scope of those terms as defined in section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6))) are required to install on, or as part of, any broadcast television digital signal transmitter, equipment to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit WEA alerts. Such equipment and technologies must have the capability of allowing licensees and permittees of NCE and public broadcast television stations to receive WEA alerts from the Alert Gateway over an alternate, secure interface and then to transmit such WEA alerts to CMS Provider Gateways of participating CMS providers. This equipment must be installed no later than eighteen months from the date of receipt of funding permitted under section 606(b) of the WARN Act or 18 months from the effective date of these rules, whichever is later.

■ 17. Section 10.350 is amended by revising the section heading, introductory text, and paragraphs (a) introductory text, (a)(2), (a)(4) and (a)(5) to read as follows:

§ 10.350 WEA Testing requirements.

This section specifies the testing that will be required, no later than the date of deployment of the WEA, of WEA components.

(a) *Required monthly tests.* Testing of the WEA from the Federal Alert Gateway to each Participating CMS Provider's infrastructure shall be conducted monthly.

* * * * *

(2) Participating CMS Providers shall schedule the distribution of the RMT to their WEA coverage area over a 24 hour period commencing upon receipt of the RMT at the CMS Provider Gateway. Participating CMS Providers shall determine the method to distribute the RMTs, and may schedule over the 24 hour period the delivery of RMTs over geographic subsets of their coverage area to manage traffic loads and to accommodate maintenance windows.

* * * * *

(4) The RMT shall be initiated only by the Federal Alert Gateway Administrator using a defined test message. Real event codes or alert messages shall not be used for the WEA RMT message.

(5) A Participating CMS Provider shall distribute an RMT within its WEA coverage area within 24 hours of receipt by the CMS Provider Gateway unless pre-empted by actual alert traffic or unable due to an unforeseen condition.

* * * * *

■ 18. Section 10.420 is revised to read as follows:

§ 10.420 Message elements.

A WEA Alert Message processed by a Participating CMS Provider shall include five mandatory CAP elements—Event Type; Area Affected; Recommended Action; Expiration Time (with time zone); and Sending Agency. This requirement does not apply to Presidential Alerts.

■ 19. Section 10.430 is revised to read as follows:

§ 10.430 Character limit.

A WEA Alert Message processed by a Participating CMS Provider must not exceed 90 characters of alphanumeric text.

■ 20. Section 10.440 is revised to read as follows:

§ 10.440 Embedded reference prohibition.

A WEA Alert Message processed by a Participating CMS Provider must not include an embedded Uniform Resource Locator (URL), which is a reference (an address) to a resource on the Internet, or an embedded telephone number. This prohibition does not apply to Presidential Alerts.

■ 21. Section 10.470 is revised to read as follows:

§ 10.470 Roaming.

When, pursuant to a roaming agreement (*see* § 20.12 of this chapter), a subscriber receives services from a roamed-upon network of a Participating CMS Provider, the Participating CMS Provider must support WEA alerts to the roaming subscriber to the extent the subscriber's mobile device is configured for and technically capable of receiving WEA alerts.

■ 22. Section 10.500 is amended by revising the introductory text to read as follows:

§ 10.500 General requirements.

WEA mobile device functionality is dependent on the capabilities of a Participating CMS Provider's delivery technologies. Mobile devices are required to perform the following functions:

* * * * *

[FR Doc. 2013–06296 Filed 3–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 05–337; FCC 13–16]

Connect America Fund; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses several issues related to changes made to high-cost universal service support for rate-of-return carriers in the *USF/ICC Transformation Order,* including granting in part requests to modify the high cost loop support (HCLS) benchmarks.

DATES: Effective March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Heidi Lankau, Wireline Competition Bureau, (202) 418–2876 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Order on Reconsideration and Memorandum Opinion and Order in WC Docket Nos. 10–90, 05–337; FCC 13–16, adopted on January 31, 2013 and released on February 27, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0227/FCC-13-16A1.pdf*

I. Introduction

1. In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission comprehensively reformed universal service and intercarrier compensation, adopting fiscally responsible, incentive-based policies to preserve and advance voice- and broadband-capable networks while requiring accountability from companies receiving support and ensuring fairness for consumers who pay into the universal service fund. Modernizing these systems, the Commission concluded, was critical to meet the universal service challenge of our time: ensuring consumers have access to high-speed Internet access as well as voice service. As part of this undertaking, the Commission reformed legacy high-cost universal service support mechanisms for rate-of-return carriers. Rate-of-return carriers serve fewer than five percent of U.S. access lines, but operate in many of the country's most difficult areas to serve. Total universal service support for such carriers was approaching $2 billion annually—more than 40 percent of the Commission's $4.5 billion overall budget for the reformed high-cost program. The Commission's reforms for rate-of-return carriers begin the transition toward a more incentive-based form of regulation to encourage efficient operation and to support the widest possible availability of broadband.

2. In this Order, we address several issues related to the changes made to high-cost universal service support for rate-of-return carriers in the *USF/ICC Transformation Order.* First, we address a number of issues raised in petitions for reconsideration or clarification of the benchmarking rule adopted in the *USF/ICC Transformation Order.* That rule establishes reasonable limits on capital and operating expenditures eligible for high-cost universal service support for rate-of-return carriers, providing better incentives for carriers to invest prudently and operate efficiently than the prior support mechanism, while providing additional support for carriers below their caps to extend broadband to rural consumers. (Rate-of-return carriers previously faced no limits on their overall spending, and received 100 percent reimbursement of loop costs above a certain level, creating a ''race-to-the-top'' in spending). We reconsider one aspect of the benchmark rule, but decline to reconsider adoption of the rule in general. We then consider a number of applications for review of the Wireline Competition Bureau's (Bureau's) *HCLS Benchmarks Implementation Order,* 77 FR 30411, May 23, 2012, which implemented the benchmarking rule for purposes of calculating high-cost loop support (HCLS), and modify certain aspects of the Bureau's order. In addition, we decline requests to reconsider the monthly per-line cap of $250 in total high-cost federal universal service support for all telephone companies, and we reaffirm the extension of the corporate operations expense cap to interstate common line support (ICLS). Finally, we take the opportunity to address requests from certain rate-of-return carriers that the Commission slow our implementation of other aspects of the *USF/ICC Transformation Order,* emphasizing the importance of continuing with the implementation of reform, but reiterating our commitment to a data-driven process.

3. As we have previously noted, the *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget, while simultaneously providing sufficient transitions for stakeholders to adapt. We observe that, under Commission rules, if a petition for reconsideration simply repeats arguments that were previously fully considered and rejected in the proceeding, it will not likely warrant reconsideration. This standard informs our analysis below.

II. Benchmarking Rule

1. Petitions for Reconsideration

4. We begin by addressing petitions for reconsideration of the benchmarking rule. For the reasons set forth below, we reconsider the Commission's original rule insofar as it requires the Bureau to rerun the benchmark regression annually and direct the Bureau to consider whether running the regression analyses less frequently will better serve the purposes advanced by the benchmarking rule. We deny, however, petitions for reconsideration filed by the National Exchange Carrier Association, Inc. (NECA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and Western Telecommunications Alliance (WTA), (jointly, the Rural Associations) and Accipiter Communications Inc. (Accipiter) to the extent they request that the Commission reconsider its benchmarking rule. We also clarify how support will be redistributed under that rule.

a. Rural Associations' Petition

5. The Rural Associations ask the Commission to reconsider several aspects of its limitations on reimbursable capital and operating expenses. We address certain of these arguments here.

6. *First,* the Rural Associations argue that the Commission's decision to use regression analyses to limit reimbursable capital costs and operating expenses in the *USF/ICC Transformation Order* was ''premature and improper,'' and that the Commission should instead have stated that it would ''*examine* a regression analysis approach * * * subject to adequate notice and comment.'' They claim that the Commission's decision to use regression analyses to develop the benchmarks ''leaves no room to argue that other approaches might be used in whole or in part as a substitute to achieve the kinds of constraints sought by the Commission,'' such as limiting new investment based on depreciation of existing plant, as the Associations previously proposed.

7. Contrary to the Rural Associations' allegations, the Commission provided ample opportunities for parties to comment ''on specific methods to be utilized'' to limit carriers expenses. In its February 2011 *Notice of Proposed Rulemaking,* 76 FR 11632, March 2, 2011, the Commission explained that under then-existing rules, rate-of-return carriers with high loop costs could have 100 percent of their marginal loop costs above a certain threshold reimbursed through the federal universal service fund while other carriers that took measures to control expenses could find themselves losing support to carriers that increased costs. Those effects, the Commission explained, meant that the rules did not create appropriate incentives to control costs and invest rationally. The Commission proposed to address these concerns by using regression analyses to estimate appropriate levels of capital and

operating expenses, sought comment on this proposal, and adopted its benchmarking rule after considering the comments received, including those filed by the Rural Associations. The Commission found that the approach it adopted is a ''reasonable way to place limits on recovery of loop costs'' and specifically rejected the Rural Associations' proposed alternative because it ''would do little to limit support for capital expenses if past investments for a particular company were high enough to be more than sufficient to provide supported services, and would do nothing to limit support for operating expenses, which are on average more than half of total loop costs.'' The Associations raise no new arguments to change this conclusion, and therefore we reject their petition to reconsider the adoption of benchmarks or the regression approach generally.

8. *Second,* the Rural Associations ask the Commission to reconsider its decision to change the caps annually based on a ''refreshed'' run of the regression analyses, arguing that the Commission should instead leave any caps in place for at least seven years. They argue that if the regressions are updated each year, carriers could be encouraged to invest less to avoid being affected by the caps because ''it appears that a carrier could actually reduce or maintain existing investment and expense levels during a given year but still suffer unexpected reductions in its HCLS * * * if its 'peer group' has changed or if its existing peers have reduced their costs faster.''

9. Since filing their petition, the Rural Associations have modified this request for relief. They no longer request that the Commission freeze any regression-based caps for at least seven years. Pending further updating and analysis of the regression methodology, they urge the Commission to ''hold the caps constant for a period of several years starting in 2014,'' and then analyze the regression methodology ''to determine whether there are more optimal methods than such a default rule to address concerns with respect to predictability in the longer-term.''

10. We note, as an initial matter, that the Bureau chose to use the same regression coefficients in 2013 as those calculated for 2012 during the phase-in of the initial benchmarks (i.e., it ''froze'' the 2012 coeffecients for 2013). Accordingly, carriers have been able to determine their benchmarks, and estimate their support, throughout the phase-in period. In effect, during the phase-in, the Bureau's approach is consistent with the Rural Associations' request. In addition, as discussed in more detail below, we direct the Bureau to revise the benchmark methodology to generate a single cap for each study area; these updated benchmarks will apply beginning in 2014. The issue before us now, therefore, is how frequently the new benchmarks should be updated beginning 2015.

11. As the Rural Associations recognize, the decision whether and if so, how to freeze the expense benchmarks involves a number of tradeoffs. On the one hand, as the Rural Associations point out, more frequent updates create the possibility of changes in carriers' support levels. If carriers cannot estimate likely future support levels with a reasonable degree of certainty, frequent updates may deter even efficient investment. On the other hand, in practice, annual updates may produce only small changes for all or nearly all carriers. In fact, a comparison of the 2012 benchmarks with 2013 benchmarks, calculated as if the Bureau had not frozen the 2012 coefficients, shows that the ratio of an individual carrier's costs to its caps in 2012 is strongly predictive of whether the carrier would have been capped in 2013. Moreover, if the benchmarks are updated less frequently, over time they may fail to reflect industry-wide cost trends and cap carrier spending at levels that are either too high or too low. And if the benchmarks are updated infrequently, each update could cause larger and more sudden changes in support levels, at least for a subset of carriers. Updating the benchmarks less frequently also risks treating similarly situated carriers differently based on the timing of their investments. For example, a study area that has higher costs due to investment would not have those investments reflected in its benchmark if its benchmark cap were frozen. A freeze could therefore also distort carriers' investment decisions by encouraging them to time their investments to maximize their benchmarks rather than to invest efficiently. In addition, while there are many potential means to limit the volatility of the benchmarks from year to year, each potential approach would have, necessarily, a different ultimate effect on each study area's benchmarks, and thus its own costs and benefits.

12. In light of these considerations, we reconsider the Commission's decision to the extent it requires the Bureau to update the regressions annually. We direct the Bureau, as it updates the benchmarks for 2014, to consider whether these benchmarks should be held constant for multiple years, and, if so, which mechanism would best advance our objectives to preserve and advance the deployment of voice- and broadband-capable networks while providing better incentives for carriers to invest prudently and operate efficiently. In doing so, the Bureau should carefully consider the extent to which annual updates are likely to cause significant year-over-year changes in support levels. We expect the Bureau to adopt an approach that will provide carriers sufficient certainty regarding future years' benchmarks to encourage efficient investment while maintaining the balance struck in the Commission's reforms to encourage efficient spending by HCLS recipients.

13. *Finally,* the Rural Associations ask the Commission to reconsider its decision regarding the reductions resulting from the HCLS benchmarks and ''find instead that the entirety of those reductions will be redistributed to other [rural carriers]—including those impacted by new caps—within the overall capped HCLS mechanism.'' They argue that not redistributing reductions to capped carriers results in a ''double cap'' on HCLS.

14. We decline to reconsider the Commission's decision to redistribute HCLS only to those carriers whose loop costs are not capped by the benchmarks. We find that providing additional support to carriers with the highest costs relative to their peers is contrary to the purposes of the benchmarking rule. Moreover, by providing redistributed support only to carriers that are below their benchmarks, the rule provides an additional incentive for carriers to operate efficiently and keep costs below their caps. In addition, we note that the Rural Associations appear to assume that by allowing carriers capped by the benchmarks to receive redistributed support, they would have the chance to recover ''more *but still not all''* of their high loop costs. To the contrary, the Rural Associations' proposal could permit some carriers limited by the benchmarks to receive more in redistributed support than they would lose through the benchmark reductions.

15. While we disagree with the Rural Associations' proposal to redistribute HCLS to carriers whose support is capped by the benchmarks, we take this opportunity to clarify that there is no ''double cap'' on HCLS. That is, we clarify that all HCLS reductions will be redistributed, though only to carriers whose loop costs are not limited by the benchmarks. In discussing the proposed methodology for creating benchmarks the Commission estimated that only approximately half of the HCLS reductions experienced by carriers limited by the benchmarks would be

redistributed. Other language in *the USF/ICC Transformation Order* made clear, however, that the Commission was not mandating partial redistribution. Specifically, the Commission said ''we will place limits on the HCLS provided to carriers whose costs are significantly higher than other companies that are similarly situated, and support will be redistributed to those carriers whose unseparated loop cost is not limited by operation of the benchmark methodology.'' We note that under the phase-in adopted by the Bureau, all HCLS reductions were redistributed in 2012. And now we clarify that all reductions will be redistributed in future years as well.

b. Accipiter Petition

16. Accipiter argues that the Commission's decision to adopt cost benchmarks is flawed because such benchmarks cannot distinguish between carriers that ''may legitimately be outliers due to particular considerations, including population density, terrain, and operating environment,'' and carriers that ''are outliers due to waste, fraud or abuse, or other inefficiencies.'' Accipiter claims the failure to make this distinction is ''irrational'' and reflects a failure to consider the specific challenges facing Accipiter and other carriers.

17. We disagree. The Commission's benchmarking approach is designed precisely to compare each individual carrier's costs to those of similarly situated carriers, accounting for the most significant drivers of cost such as ''density, terrain, and operating environment.'' It is reasonable for the Commission to adopt a general rule to identify carriers with costs that are significantly higher than most of their similarly situated peers instead of relying on more costly and administratively burdensome alternatives such as audits. Carriers that believe that the benchmarks do not adequately address unique circumstances that they face can seek a waiver of the Commission's rules. Accipiter's petition for reconsideration reads more like a petition for waiver, and in fact, Accipiter sought, and the Bureau granted, a temporary waiver of the benchmarking rule and other new rules that would limit its support.

18. In its petition for reconsideration, Accipiter makes a variety of other arguments that relate not to the Commission's rule as adopted, but rather to the benchmarking methodology proposed in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011. But those complaints are not relevant to our reconsideration of the Commission's benchmarking rule. The Commission delegated to the Bureau the authority to adopt and implement a final methodology, which the Bureau did in its April 2012 *HCLS Benchmarks Implementation Order.* Several parties, including Accipiter, filed separate applications for review of the Bureau's *HCLS Benchmarks Implementation Order.* We turn to that order now.

2. Applications for Review

19. We next address a number of arguments raised in the context of applications for review of the Bureau's *HCLS Benchmarks Implementation Order,* and we modify the Bureau's order in three respects. Specifically, (1) we direct the Bureau to develop a regression methodology that will generate a single total loop cost cap for each study area beginning in 2014; (2) as an interim measure toward a single cost cap, for purposes of calculating HCLS support in 2013, we sum capex and opex caps generated by the Bureau's current methodology; and (3) we modify the phase-in of the benchmarks for 2013. We do not otherwise modify the Bureau's *HCLS Benchmarks Implementation Order* at this time. In taking these actions, we address certain of the arguments raised in the applications for review, and we defer consideration of the other issues raised in those applications for review.

20. *Single Total Cost Cap.* Consistent with the Commission's direction, the Bureau's *HCLS Benchmarks Implementation Order* generated limits on reimbursable capital expenses and operating expenses for purposes of determining HCLS; compared companies' costs to those of similarly situated companies; and used statistical techniques to determine which companies shall be deemed similarly situated. Consistent with the Commission's delegation of authority, the Bureau also considered and tested additional variables and made further improvements to the methodology based on the comments from two peer reviewers and interested parties, and its own analysis. The most significant change in the methodology that the Bureau made was using two regressions to generate only two caps for each company—a capex limit and an opex limit—rather than generating eleven caps as originally proposed in Appendix H of the *USF/ICC Transformation FNPRM.*

21. We agree with the Bureau's decision to use fewer regressions than proposed in the *USF/ICC Transformation FNPRM.* The Bureau explained that doing so ''enables carriers to account for the needs of individual networks and recognizes the fact that carriers may have higher costs in one category that may be offset by lower costs in others.'' The Bureau adopted two regressions even though ''[u]sing a greater number of regressions makes it possible to identify outliers at a granular level.'' Although one peer reviewer and some commenters recommended using a single regression to limit total cost, the Bureau decided that approach ''would provide fewer safeguards against overspending.'' Because ''[c]apital and operating expenditures reflect fundamentally different measures of business performance,'' the Bureau reasoned that ''[u]sing two regressions instead of one provides carriers flexibility to manage their operations, while still enabling the Commission to identify more instances where carriers spend markedly more in either category than their similarly-situated peers.''

22. We agree with commenters that the Bureau's methodology was an improvement over the proposed methodology that used eleven regressions, and we recognize that there are trade-offs in choosing the number of regressions. On balance, we conclude that going forward, it would be better to use one regression to generate a single cap on total loop costs for each study area. A single cap will provide carriers with greater flexibility to account for the specific needs of their locales and networks. This approach recognizes that carriers often consider the trade-offs between capital costs and operating expenses when making investment decisions. For example, in its Application for Review, Central Texas argues that it ''balanced the costs of using aerial cables against the costs of burying cable and determined that it costs less overall to bury cable, rather than constantly maintain and replace aerial cable in the windy, tough, varmint-ridden Texas terrain. By keeping its cable maintenance costs low, Central Texas receives no credit from the regression model for doing so even though it has much lower operational expenditures.''

23. The record before the Bureau when it adopted two regressions instead of eleven regressions also contained support for using a single regression. For example, as noted above, one of the peer reviewers of the benchmark methodology, Paroma Sanyal, stated that ''individual cost capping [i.e. capping individual types of costs rather than total costs] ignores any complementar[it]y or substitutability between the various cost components,'' which may discourage overall cost-

minimization and fails to recognize that carriers face different trade-offs between types of expenses. Sanyal suggested that ''[a] more flexible approach may be to estimate the 90th percentile over the total cost,'' which ''would be more in line with theoretical cost-minimization approaches where * * * expenditure caps can enhance efficiency under a rate-of-return regulation.'' Similarly, Roger Koenker, one of the economists who developed quantile regression analysis, opined that his ''primary criticism of the proposed FCC methodology [in Appendix H] lies in the way that cost estimates for individual cost components are aggregated. * * * A preferable, and simpler, approach would be to develop one conditional quantile model for aggregate costs.'' Koenker concluded that the proposed aggregation of cost categories ''yields cost limits that may be unduly stringent in some cases, and unduly lenient in others.''

24. For these reasons, we are persuaded that using a single total loop cost benchmark would be preferable to using separate capex and opex caps. Accordingly, we direct the Bureau to develop a regression methodology that will generate a single cap for each study area. We note that the Bureau also will be incorporating into its analysis revised study area boundaries, which will be obtained through an upcoming data collection. We direct the Bureau to analyze the impact of various approaches prior to adopting its new methodology, which we anticipate will be implemented for distribution of HCLS beginning in 2014.

25. *Summing Capex and Opex Caps for 2013.* We recognize that the Bureau needs time to develop and seek comment on a new methodology, and therefore, absent some interim measure, carriers would continue to operate under two separate caps until 2014. We therefore conclude it is appropriate to combine or ''sum'' the existing caps as an interim measure. As a result, for purposes of providing HCLS, starting the first full month after the effective date of this Order and for the rest of 2013, we will account for the trade-offs carriers make between capital expenditures and operating expenses by summing the capex and opex caps as an interim measure. That is, we will add each study area's capex and opex benchmarks together to establish a new limit on total unseparated loop costs for purposes of determining HCLS. In the short term, summing the capex and opex benchmarks together will provide an administratively feasible means to recognize the trade-offs between capital and operating expenses that carriers have made over time, while the Bureau works to develop a new single-equation regression. We note that external parties and one peer reviewer have expressed concern about summing benchmarks based on quantiles. As a matter of statistics, the sum of the quantiles is not the quantile of the sums, which is to say that summing two 90th percentile benchmark caps does not produce the same result as would setting a cap based on the 90th percentile of total costs. Although summing is imperfect as an estimate of the 90th percentile of overall costs, we find that as an interim measure it provides a reasonable way to recognize that there are tradeoffs between capital and operating expenditures. For example, to the extent a carrier's costs are over the capex benchmark but under the opex benchmark because it has made large investments to lower its operating costs and overall costs, summing the benchmarks will provide additional allowances for these expenditures.

26. *Phase-In.* We also slightly modify the phase-in of the HCLS benchmarks adopted by the Bureau. Applications for review of the *HCLS Benchmarks Implementation Order* ask us to either set it aside or delay the implementation of the HCLS benchmarks until the Commission addresses various concerns. Although we deny requests to delay the implementation, we modify the phase-in to limit the amount by which any one carrier's support may be reduced in 2013. In 2012, HCLS was reduced by twenty-five percent of the difference between the support calculated using the study area's reported cost per loop and the support as limited by the benchmarks, unless that reduction would exceed ten percent of the study area's support as otherwise would be calculated based on NECA cost data. The Bureau's phase-in for 2013, as adopted in *HCLS Benchmarks Implementation Order,* will reduce support by fifty percent of the difference between the support calculated using the study area's reported cost per loop and the support as limited by the benchmarks in effect for 2013, but remove the limit on the total impact on individual carriers. We maintain the Bureau's fifty percent phase-in for 2013. However, starting the first full month after the effective date of this Order and for the rest of 2013, we will limit the amount of the reduction to no more than fifteen percent of the study area's support as otherwise would be calculated based on NECA cost data, absent implementation of the benchmark rule. We conclude that this strikes a reasonable balance between continuing the phase-in of the benchmark rule, while giving those carriers most heavily impacted additional time to adjust, particularly as the Bureau updates the benchmarks for 2014.

27. *Other Issues.* In this section we address a number of other issues raised in the applications for review; we defer consideration of the remaining issues to a future order.

28. *Predictability.* Several parties argue that the Bureau's benchmark methodology results in support amounts that are unpredictable in violation of section 254(b)(5) of the Communications Act of 1934, as amended (the Act). Central Texas, for example, claims that the dynamic, annually changing nature of the regression caps does not allow carriers to predict future HCLS based on current and near-future expenditures. And Accipiter argues that the results are so unpredictable that the Bureau's methodology ''effectively prohibits companies from making reasonable and rational investment decisions.'' We disagree.

29. As the United States Court of Appeals for the Fifth Circuit explained in *Alenco,* the Commission can satisfy the statute by adopting predictable *rules* that govern distribution of subsidies; its rules need not provide precisely predictable *funding amounts.* Yet what these parties seek is precisely the predictable funding amounts the statute does not require. In any event, as noted above, the Bureau provided that same regression coefficients would be used in 2013 as those calculated for 2012 in order to ensure that carriers would be able to calculate their benchmark caps for the phase-in period well in advance. Accordingly, at least with respect 2012 and 2013, the carriers were, in fact, provided with the certainty they request. And, as discussed above, for 2014 and beyond, we direct the Bureau to revise its methodology to set a single total cost benchmark for each study area and to consider how frequently that regression should be updated. We do so with the expectation that the Bureau will adopt an approach that will provide carriers sufficient certainty regarding future years' benchmarks to encourage efficient investment while maintaining the balance struck in the Commission's reforms to encourage efficient spending by HCLS recipients. For these reasons, we reject the claim that the Bureau's order violates the Act because it provides insufficient predictability.

30. *Similarly-Situated Companies.* We also disagree with the Rural Associations' claim that the ''Bureau's methodology does not rely on statistical analysis of 'similarly situated'

companies, as the Commission's *USF/ICC Transformation Order* directed. In fact, the actual formulas do not establish *any* comparator groups.'' They argue that the benchmark ''formulas impose limitations on companies *without regard to* whether their per-unit costs are excessive or relatively high compared to 'peers.''' On the contrary, we find that the Bureau's regression analysis was consistent with Commission's direction. We note that the Rural Associations never explain how they would propose to define ''similarly situated'' companies. We conclude that the Bureau took a reasonable approach, taking into account all the significant variables in determining the caps, in effect comparing each company to all other companies to the degree to which the companies are similar in regard to the variables found to be significant (i.e., the degree to which they are similarly situated).

31. *Trigger.* We also reject the argument made by several parties in their applications for review that ''a regression model should be used only to trigger a harder look to determine whether a carrier's costs were truly 'inefficient.''' The Commission did not provide the Bureau with the discretion to use the regression methodology in that manner. Moreover, as explained above in the context of the petitions for reconsideration, we conclude that it was reasonable for the Commission to adopt a general rule to identify carriers with costs that are significantly higher than their peers instead of relying on more costly and burdensome approaches like audits, as would be required if the regression methodology were used merely as a trigger.

32. Finally, while we have, in this Order, addressed a number of significant issues raised in the applications for review, we recognize that a number of issues remain pending. We otherwise defer consideration of issues not addressed herein.

III. Limits on Total Per-Line High-Cost Support

33. We deny both petitions for reconsideration. In the *USF/ICC Transformation Order,* the Commission concluded that a $250 cap would be reasonable after finding that ''support drawn from limited public funds in excess of $250 per-line monthly * * * should not be provided without further justification.'' The Commission also noted that ''virtually all (99 percent) of incumbent LEC study areas currently receiving [universal service] support are under the $250 per-line monthly limit.'' Even so, to provide affected carriers a measured transition, the Commission delayed the implementation of the $250 cap for six months to ''provide an opportunity for companies to make operational changes, engage in discussions with their current lenders, and bring any unique circumstances to the Commission's attention through the waiver process.'' Moreover, after the six-month delay, the Commission phased-in the $250 cap ''to ease the potential impact of this transition.'' As a result, effective July 1, 2012, carriers subject to the $250 cap received support of no more than $250 per-line plus two-thirds the difference between their uncapped per-line amount and $250, and effective July 1, 2013, carriers will receive no more than $250 per-line plus one-third the difference between their uncapped per-line amount and $250 through June 30, 2014.

34. Petitioners have not presented any new evidence or arguments that persuade us to reconsider adoption of the $250 per-line per month cap. And, we disagree with the Rural Associations' claims that the Commission failed to adequately explain the basis for adopting the $250 cap. The Commission provided a thorough, reasoned analysis of the basis for adopting the $250 cap. By phasing-in the $250 cap, the Commission also provided carriers time to adjust, while promoting the Commission's goal of fiscal responsibility. Moreover, the *USF/ICC Transformation Order* acknowledged that if there are unique circumstances, carriers should utilize the waiver process. We recently modified and clarified the Commission's guidance for the waiver process in our *Fifth Order on Reconsideration,* 78 FR 3837, January 17, 2013.

35. We note that, in 2011, there were 26 incumbent study areas that received $250 per month or more in per-line support. Of those 26 study areas, the Commission has received nine waiver petitions arguing that waiver of the cap is necessary for the company to continue to serve its community; one of those petitions subsequently was withdrawn. That the carriers serving the remaining study areas have not filed for waivers suggests that the measured transition adopted by the Commission provides an appropriate amount of time for affected companies to adjust their operations without disrupting service to consumers.

36. We deny the requests of Accipiter and the Rural Associations that the Commission apply the $250 cap ''on a prospective basis only.'' The Commission decided, after fully considering the record, that the immediate adoption of the $250 cap would advance its goal of imposing responsible fiscal limits on universal service support. Accipiter claims that applying the cap ''to previously-incurred expenses is in no way consistent with the Congressional directive that support be 'predictable,' and would punish carriers for reasonable investment decisions that cannot be reversed to account for the Commission's new rules.'' The Commission fully considered and rejected such arguments in the *USF/ICC Transformation Order,* explaining that section 254 of the Act ''does not create any entitlement or expectation that ETCs will receive any particular level of support or even any support at all.'' In fact, ''there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and [the Commission is] not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support.'' In addition, the Commission upheld the principle that universal service mechanisms be predictable by adopting a measured transition to the implementation of the $250 cap for all carriers that made clear how much support carriers could expect to receive as the cap was phased in. As discussed above, rather than ''punish'' carriers for previously incurred expenses, the Commission made efforts to ''ease the potential impact'' of the transition on all carriers by delaying the implementation of the cap for six months, phasing in the cap over a period of three years, and providing a waiver process for those carriers that face unique circumstances.

IV. ICLS Corporate Operations Expense Cap

37. Accipiter and the Rural Associations provide no new evidence and introduce no new arguments that persuade us to reverse or otherwise modify this approach, and therefore we deny these petitions for reconsideration. Accipiter claims that any immediate extension of the corporate operations expense cap to ICLS will have ''devastating financial implications'' on carriers that are in the process of growing their operations to serve rural areas. Accipiter notes that ''[c]orporate operations expenses must be incurred before a carrier can add its first line,'' while acknowledging that ''per-line corporate operations costs are quickly averaged down as new subscribers are added.'' But the Commission has already made accommodations for carriers with limited subscribership. The Commission retained the rule that permits carriers with 6,000 or fewer working loops to recover a minimum

amount per working loop if they would receive less than that minimum under the application of the ICLS corporate operations expense cap formula (i.e., $42.337—(.00328 × number of total working loops)). Specifically, such carriers can recover monthly for each working loop: $63,000 divided by their total number of working loops. Moreover, if carriers believe that due to their unique characteristics, they need to recover more corporate operations expenses through ICLS than allowed for under the cap, they remain free to petition for a waiver of the cap pursuant to the Commission's waiver process.

38. The Rural Associations request that the Commission delay the implementation of the ICLS corporate operations expense cap ''until no sooner than January 1, 2013.'' They argue that the Commission should not implement the corporate operations expense cap before carriers ''have adequate opportunity to adjust their operations for compliance'' with the new operating expense caps that the Commission proposed to develop through regression analysis in the *FNPRM.* The Rural Associations have not provided any evidence, however, demonstrating why extending the HCLS corporate operations expense limit to ICLS was inappropriate or why it would be necessary to delay a critical reform that advances the Commission's goals of improving fiscal discipline and accountability.

39. We also deny Accipiter's claim that the Commission violated 47 U.S.C. 254(b)(5) by applying the ICLS corporate operations expense cap to support for 2012, which is determined with reference to 2010 expenses. The company argues that it ''reasonably and rationally made decisions about 2010 investments and expenses based on the rules that were in place in 2010.'' But as we discussed above and addressed repeatedly in the *USF/ICC Transformation Order,* section 254 does not entitle carriers to recover USF support simply because they expected to receive that support. Accipiter does not cite any additional legal authority that persuades us otherwise.

40. Finally, we are not persuaded by Accipiter's argument that a ''one size fits all rule,''—i.e., using a nationwide formula to cap ICLS—is ''inappropriate and inflexible'' due to the variability in corporate operations expenses between different regions in the country. Accipiter has not provided any evidence to explain why a nationwide formula is unreasonable. Indeed, the Commission has used a nationwide formula to limit the recovery of corporate operations expenses for HCLS ever since it adopted that corporate operations expense cap in 1997. Accipiter has failed to explain how ICLS differs from HCLS in such a way that it would be unreasonable for the Commission to extend the HCLS nationwide formula to ICLS.

V. Implementation of Further Reforms for Rate-of-Return Carriers

41. Finally, we take this opportunity to address some general arguments made by a number of rate-of-return carrier associations that the Commission should undertake ''a careful data-driven process that takes measure of * * * reforms just now being implemented,'' including those reforms described above, ''in lieu of racing forward with additional changes.'' Although we disagree with these carriers insofar as they suggest we stop our implementation of the Commission's *USF/ICC Transformation Order,* we agree that a careful data-driven process is consistent with—and indeed critical to—that implementation. We emphasize our continued commitment to such a process, and we direct the Bureau, as it implements the modifications described above and proceeds with other reforms adopted in the *USF/ICC Transformation Order,* to continue taking all appropriate steps to seek input from affected stakeholders, and gather relevant data on the effect of reforms as they proceed. As an additional measure, we direct the Bureau to report to the Commission, within two years of release of the *USF/ICC Transformation Order,* i.e., November 18, 2013, on the progress of implementation, and on the impact of reforms based on relevant, available data at that time.

VI. Procedural Matters

A. Paperwork Reduction Act

42. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Act Certification

43. The Regulatory Flexibility Act (''RFA'') requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

44. This document modifies and clarifies the benchmarking rule adopted by the Commission in *USF/ICC Transformation Order,* and modifies the Wireline Competition Bureau's implementation of that rule. These modifications and clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order.* The Commission will send a copy of the Order including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

C. Congressional Review Act

45. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

D. Effective Date

46. We conclude that good cause exists to make this Order effective immediately upon publication in the **Federal Register**, pursuant to section 553(d)(3) of the Administrative Procedure Act. Agencies determining whether there is good cause to make a rule revision take effect less than 30 days after **Federal Register** publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. As we note above, summing the capex and opex benchmarks together is an important interim step to recognize the trade-offs that carriers have made in investment, and will therefore mitigate or eliminate the effect of the existing benchmarks cap mechanism on carriers that are capped under one or the other

benchmark but not both. It will also reduce the amount of support redistributed to uncapped carriers by a corresponding amount. Because many more carriers receive redistributed support than are capped under the existing mechanism, the effect of summing the caps on any carrier receiving redistributed support will generally be much less significant than the effect on those carriers that are currently capped. Moreover, we note that high cost loop support is generally subject to true-ups over time. Carriers, accordingly, generally have no certain expectation of the precise amount of support they will receive. We conclude under these circumstances that the public interest is best served by immediate implementation of our new interim rule, and that, on balance carriers that will experience a minor reduction in redistributed support do not require additional time to prepare for implementation of a rule change that affects them only modestly.

47. In addition, we modified the phase-in of the HCLS benchmarks to limit the amount of reduction of support to no more than fifteen percent of the study area's support absent implementation of the benchmark rule to give carriers that are heavily impacted by the benchmarks more time to adjust. We find that implementing the modification to the phase-in as expeditiously as possible furthers the Commission's objective of ensuring that carriers experience a more gradual implementation of the benchmarks overall which obviates the necessity of providing carriers additional 30 day notice before implementation.

VII. Ordering Clauses

48. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and §§ 1.1 and 1.429 of the Commission's rules, 47 CFR 1.1, 1.429, that this Sixth Order on Reconsideration *is adopted,* effective upon publication of the text or summary thereof in the **Federal Register**.

49. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405 and §§ 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, that the Petition for Reconsideration filed by the National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance on December 29, 2011 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

50. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405 and §§ 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, that the Petition for Reconsideration filed by Accipiter Communications Inc. on December 29, 2011 *is denied in part* to the extent described herein.

51. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by Central Texas Telephone Cooperative, Inc. on May 25, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

52. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance on May 25, 2012 *is denied in part* to the extent described herein.

53. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by East Ascension Telephone Company, LLC on May 25, 2012 *is denied in part* to the extent described herein.

54. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by Silver Star Telephone Company, Inc. on May 25, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

55. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Supplement to Application for Review filed by Silver Star Telephone Company, Inc. on June 22, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

56. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by Blue Valley Telephone Telecommunications, Inc. on June 22, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

57. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by Blooston Rural Broadband Carriers on May 25, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

58. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by Accipiter Communications Inc. on May 25, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

59. *It is further ordered* that, pursuant to the authority contained in section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c) and §§ 0.291 and 1.115 of the Commission's rules, 47 CFR 0.291 and 1.115, that the Application for Review filed by United States Telecom Association on June 22, 2012 *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

60. *It is further ordered* that the Commission *shall send* a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see 5* U.S.C. 801(a)(1)(A).

61. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–06322 Filed 3–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–207; RM–11517; RM–11518; RM–11669; DA 13–228]

Radio Broadcasting Services; Ehrenberg, First Mesa, Kachina Village, Munds Park, Wickenburg, and Williams, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Media Bureau grants a Counterproposal filed by Grenax Broadcasting II, LLC, for a new FM allotment on Channel 246C2 at Munds Park, Arizona, over a conflicting Petition for Rule Making and hybrid application filed by Univision Radio License Corporation for an increase in existing service by Station KHOV–FM, Wickenburg, Arizona. The Bureau also dismisses a Petition for Rule Making filed by Rocket Radio, Inc. for a new allotment at Williams, Arizona, because no continuing expression of interest was filed.

DATES: Effective April 23, 2013.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 11–207, adopted February 14, 2013, and released February 15, 2013. *See also Notice of Proposed Rule Making and Order to Show Cause,* 77 FR 2241, published January 17, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Governmental Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

To accommodate the new allotment at Munds Park, the Bureau also substitutes Channel 281C for vacant Channel 247C at First Mesa, Arizona, at reference coordinates 35–41–09 NL and 110–21–43 WL. The reference coordinates for Channel 246C2 at Munds Park are 34–58–06 NL and 111–30–29 WL.

In comparing the new allotment at Munds Park and the proposed increase in existing service at Wickenburg, Arizona, the Bureau recognized that the Wickenburg proposal would provide a second full-time reception service to 264 persons. However, the Bureau found that this was *de minimis* and did not trigger Priority 2 of the FM Allotment Priorities. The Munds Park proposal was preferred over the Wickenburg proposal under Priority 4, other public interest matters. Although the increase in existing service at Wickenburg would provide third and fourth reception services to some underserved populations, the Bureau determined on balance that they do not outweigh the need for a second local or first competitive service at Munds Park.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 247C at First Mesa and by adding Channel 281C at First Mesa, and by adding Munds Park, Channel 246C2.

[FR Doc. 2013–06307 Filed 3–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–139; RM–11636; DA 13–258]

Television Broadcasting Services; Hampton-Norfolk, Virginia; Norfolk, Virginia-Elizabeth City, North Carolina

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Hampton Roads Educational Telecommunications Association's (HRETA). HRETA requests the reallotment of its channel *16 to Norfolk, Virginia-Elizabeth City, North Carolina, and to modify its television station, WHRO–TV's license to specify Norfolk, Virginia-Elizabeth City, North Carolina as its community of license. Norfolk, Virginia-Elizabeth City, North Carolina fails to qualify as a community for allotment purposes, and therefore, HRETA's request to modify its community of license is been denied and its petition for rulemaking is dismissed.

DATES: This rule is effective March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, *Jeremy.Miller@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 11–139, adopted February 21, 2013, and released February 22, 2013. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov*

or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2013–06316 Filed 3–18–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC570

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) to close the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone. This closure is necessary to protect the Gulf of Mexico (Gulf) king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, March 17, 2013, through June 30, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone 727–824–5305, email *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf eastern zone into northern and southern subzones, and established their separate commercial annual catch limits (ACLs), equal to commercial quotas. The 2012 to 2013 fishing year ACL (quota) for the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone is 607,614 lb (275,609 kg) (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31′06″ W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. From November 1 through March 31, the southern subzone is designated as the area extending south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, Florida, boundary), *i.e.,* the area off Collier and Monroe Counties. Beginning April 1, the southern subzone is reduced to the area off Collier County, Florida, between 25°48′ N. lat. and 26°19.8′ N. lat.

On March 12, 2013, NMFS implemented a 500-lb (227-kg) trip limit for vessels in the hook-and-line component of the commercial sector for king mackerel in or from the EEZ in the southern Florida west coast subzone (78 FR 15642, March 12, 2013).

Under 50 CFR 622.43(a), NMFS is required to close any component of the king mackerel commercial sector when its ACL (quota) has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined the ACL (quota) for hook-and-line component of the commercial sector for Gulf migratory group king mackerel in the southern Florida west coast subzone will be reached by March 17, 2013. Accordingly, the hook-and-line component of the commercial sector for Gulf migratory group king mackerel in the southern Florida west coast subzone is closed effective 12:01 a.m., local time, March 17, 2013, through June 30, 2013, the end of the fishing year.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may use hook-and-line gear to harvest or possess Gulf migratory group king mackerel in or from Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf king mackerel resource and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the hook-and-line component of the commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement

this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the ACL (quota). Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 14, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06284 Filed 3–14–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 53
Tuesday, March 19, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: USDA published a proposed rule in the **Federal Register** on June 25, 2012, which would have mandated that weekly reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and distillers dried grain (DDG) be added to the Export Sales Reporting program (ESR). A final rule was issued to add pork to the ESR, but a decision on DDG was deferred. This document provides for an additional comment period regarding mandatory export sales reporting for DDG.

DATES: Submit comments on the proposed rule on or before April 18, 2013.

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone at (202) 720–3274; or fax to (202) 720–0876.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Confidentiality: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone on (202) 720–3274; or by fax (202) 720–0876.

SUPPLEMENTARY INFORMATION:

Background

USDA published a proposed rule in the **Federal Register** on June 25, 2012 (77 FR 37823), which proposed mandating weekly export sales reporting for pork (fresh, chilled, or frozen muscle cuts/whether or not boxed) and DDG to the ESR. Under this proposed rule, all exporters of U.S. pork and DDG would have been required to report, on a weekly basis, information on the export sales of pork and DDG to the Foreign Agricultural Service, USDA. The 60-day public comment period ended on August 24, 2012. USDA issued a final rule that amended the regulation to add pork to the ESR, but determined that further comments should be solicited regarding DDG.

Five comments mentioned DDG, of which three were favorable and two were unfavorable. One trade association stated: ''We believe [adding DDG] would facilitate market transparency and allow our industry and our corn marketing partners with the ability to conduct accurate and timely analysis of U.S. market conditions.'' Another commenter stated: ''[Adding DDG] would help avoid future price inflation such as we had in 1973/74 when the 'Great Russian Grain Robbery' occurred.'' Another commenter stated ''Having these [DDG] sales brings market transparency which will allow all market participants to digest the data.''

Another trade association expressed concerns about the impacts of adding DDG, stating: ''DDGs are traded with highly variable and specific quality terms that differ greatly based on end use. For example, exported DDGs often require a specific color or nutritional profile that's not necessarily the same as the product that's traded domestically. Providing export sales reporting may skew the markets viewpoint on domestic sales.'' Another commenter stated, ''I would question why DDGs are listed to be reported, and other corn milling co-products like Corn Gluten Feed, etc., are not. I would also like to know the compelling reason for the need to have DDGs reported at all?''

Determination To Extend the Public Comment Period on Proposed Rule

Both supporters and opponents' views appear to have merit. The concerns raised with respect to the potential negative impact that mandatory export sales reporting for DDG would have on the domestic DDG market, especially the view expressed by one of the trade associations that the reporting information may confuse markets and skew domestic prices, justify an additional comment period.

All comments previously submitted to USDA during the initial comment period will be given full consideration, so there is no need to resubmit these comments. Please provide any available specific information in support of your comments. If after evaluating all the comments received with respect to DDG, USDA determines to add DDG to the exporting reporting requirements, USDA would amend Appendix 1 to Part 20, adding DDG to the list of commodities to be reported, as set forth below.

Executive Order 12866

The proposed rule has been determined to be not significant under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on small businesses.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with state and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. This proposed rule neither provides federal financial assistance nor direct federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this rule would not have a preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this proposed rule would not have any 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. Nor would this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175

This proposed rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Public Law 104–4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these requirements are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Secretary of Agriculture is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this rule.

List of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, and Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 20 is proposed to be amended as follows:

PART 20—EXPORT SALES REPORTING REQUIREMENTS

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

Authority: 7 U.S.C. 5712.

■ 2. Section 20.4 is amended by revising paragraph (c) to read as follows:

§ 20.4 Definitions.

* * * * *

(c) *Commodity.* Wheat and wheat flour, feed grains, distillers dried grain, oilseeds, cotton, rice, cattle hides and skins, beef and pork, and any products thereof, and any other agricultural commodity the Secretary may designate. ''Commodity'' shall also mean a commodity having identifying characteristics as described in any announcement issued pursuant to § 20.5 such as class(es) of wheat and rice, or staple length(s) of cotton. Mixed wheat shall be considered to be the predominant wheat class of the blend. This definition excludes commodities to be used for seed which have been treated in such a manner that their use is limited to seed for planting purposes or on which a certificate has been issued by a recognized seed testing laboratory setting forth variety, germination and purity.

* * * * *

■ 3. Appendix 1 to part 20 is revised to read as follows:

Appendix 1 to Part 20—Commodities Subject to Reporting, Units of Measure To Be Used in Reporting, and Beginning and Ending Dates of Marketing Years

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Wheat—Hard red winter	Metric Tons	June 1	May 31.
Wheat—Soft red winter	Metric Tons	June 1	May 31.
Wheat—Hard red Spring	Metric Tons	June 1	May 31.
Wheat—White (incl. Hard and soft white)	Metric Tons	June 1	May 31.
Wheat—Durum	Metric Tons	June 1	May 31.
Wheat—Products—All wheat flours (including clears) bulgur, semolina, farina, and rolled, cracked and crushed wheat.	Metric Tons	June 1	May 31.
Barley—Unmilled (including feed and hull-less waxy barley).	Metric Tons	June 1	May 31.
Corn—Unmilled (including waxy, cracked—if 50% whole kernels).	Metric Tons	Sept. 1	Aug. 31.
Distillers Dried Grain	Metric Tons	Sept.1	Aug. 31.
Rye—Unmilled	Metric Tons	June 1	May 31.

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Oats—Unmilled	Metric Tons	June 1	May 31.
Grain Sorghum—Unmilled	Metric Tons	Sept. 1	Aug. 31.
Soybeans	Metric Tons	Sept. 1	Aug. 31.
Soybean Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Soybean Oil—including: crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydro-genated, packaged oil.	Metric Tons	Oct. 1	Sept. 30.
Flaxseed	Metric Tons	June 1	May 31.
Linseed Oil—including raw, boiled	Metric Tons	June 1	May 31.
Cottonseed	Metric Tons	Aug. 1	July 31.
Cottonseed Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Cottonseed Oil—including crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	Metric Tons	Oct. 1	Sept. 30.
Sunflowerseed Oil crude, once refined, sunflowerseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	Metric Tons	Oct. 1	Sept. 30.
Cotton—American Pima—Raw, extra long staple	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 1/16 inches and over.	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 inch up to 1 1/16 inches.	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length under 1 inch	Running Bales	Aug. 1	July 31.
Rice—Long grain, rough (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, rough (including parboiled).	Metric Tons	Aug. 1	July 31.
Rice—Long grain, brown (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, brown (including parboiled).	Metric Tons	Aug. 1	July 31.
Rice—Long grain, milled (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, milled (including parboiled, brewer's rice).	Metric Tons	Aug. 1	July 31.
Cattle Hides and Skins—Whole cattle hides, (excluding wet blues).	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole calf skins (excluding wet blues).	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole kip skins, (excluding wet blues).	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf, and kip cut into croupons, crops, dossets, sides, butts and butt bend (hide equivalent) (excluding wet blues).	Number	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf and kip, in cuts not otherwise specified; pickled/limed (excluding wet blues).	Pounds	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—unsplit (whole or sided) hide equivalent.	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—grain splits (whole or sided) hide equivalent.	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—splits, (excluding grain splits).	Pounds	Jan. 1	Dec. 31.
Beef—fresh, chilled or frozen muscle cuts/whether or not boxed.	Metric Tons	Jan. 1	Dec. 31.
Pork—fresh, chilled or frozen muscle cuts/whether or not boxed.	Metric Tons	Jan. 1	Dec. 31.

Dated: February 26, 2013.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2013–06084 Filed 3–18–13; 8:45 am]

BILLING CODE 3410–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0852; Airspace Docket No. 12–AWP–5]

Proposed Amendment of Class E Airspace; Eureka, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM would further modify Class E airspace at Eureka Airport, Eureka, NV. In a NPRM published in the **Federal Register** on December 21, 2012, the FAA proposed to create additional airspace at Eureka Airport to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures. The FAA has found that further enlargement

of Class E airspace 1,200 feet above the surface is necessary to enhance safety in the Eureka, NV area.

DATES: Comments must be received on or before May 3, 2013.

ADDRESSES: Send comments on this proposal 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; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0852; Airspace Docket No. 12–AWP–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On December 21, 2012, the FAA published a NPRM to modify Class E airspace, extending upward from 700 feet or more above the surface, at Eureka Airport, Eureka, NV (77 FR 75594). The comment period closed February 4, 2013. No comments were received. Subsequent to publication, the FAA's Terminal Products Group found that the airspace 1,200 feet above the surface needed to be enlarged southeast of the Eureka Airport. The FAA seeks comments on this SNPRM.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0852 and Airspace Docket No. 12–AWP–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0852 and Airspace Docket No. 12–AWP–5''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Supplemental Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by further increasing the Class E airspace extending upward from 1,200 feet above the surface southeast of Eureka Airport, Eureka, NV, to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Eureka Airport. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would further amend controlled airspace at Eureka Airport, Eureka, NV.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

AWP NV E5 Eureka, NV [Modified]

Eureka Airport, NV
(Lat. 39°36′14″ N., long. 116°00′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Eureka Airport; and within 1.5 miles either side of the 011° bearing of the airport extending from the 6.6-mile radius to 10 miles north of Eureka airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 40°35′00″ N., long. 115°57′00″ W.; to lat. 40°32′00″ N., long. 115°32′00″ W.; to lat. 40°11′24″ N., long. 115°19′00″ W.; to lat. 40°00′00″ N., long. 115°48′00″ W.; to lat. 39°31′00″ N., long. 115°49′00″ W.; to lat. 39°37′00″ N., long. 115°32′00″ W.; to lat. 40°01′00″ N., long. 115°15′00″ W.; to lat. 39°58′00″ N., long. 115°04′00″ W.; to lat. 39°37′00″ N., long. 114°53′00″ W.; to lat. 39°08′00″ N., long. 115°10′00″ W.; to lat. 39°06′00″ N., long. 115°57′00″ W.; to lat. 39°22′00″ N., long. 116°14′00″ W.; to lat. 39°43′00″ N., long. 116°08′00″ W.; to lat. 40°08′00″ N., long. 116°02′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on March 7, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–06305 Filed 3–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0147; Airspace Docket No. 13–AWP–1]

Proposed Establishment of Class E Airspace; Tuba City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Tuba City VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC), Tuba City, AZ to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver, Albuquerque and Salt Lake City Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before May 3, 2013.

ADDRESSES: Send comments on this proposal 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; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0147; Airspace Docket No. 13–AWP–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0147 and Airspace Docket No. 13–AWP–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0147 and Airspace Docket No. 13–AWP–1''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending

upward from 1,200 feet above the surface at the Tuba City VORTAC, Tuba City, AZ. This action would contain aircraft while in IFR conditions under control of Denver, Albuquerque and Salt Lake City ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Tuba City VORTAC, Tuba City, AZ.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6006 En route domestic airspace areas.

* * * * *

ANM AZ E6 Tuba City, AZ [New]

Tuba City VORTAC, AZ
(Lat. 36°07′17″ N., long. 111°16′11″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 39°37′44″ N., long. 111°07′28″ W.; to lat. 39°26′10″ N., long. 110°01′33″ W.; to lat. 38°36′14″ N., long. 109°28′14″ W.; to lat. 38°35′57″ N., long. 109°02′31″ W.; to lat. 38°28′30″ N., long. 109°03′18″ W.; to lat. 38°04′06″ N., long. 108°53′29″ W.; to lat. 37°48′47″ N., long. 108°54′40″ W.; to lat. 37°37′12″ N., long. 109°18′38″ W.; to lat. 37°36′54″ N., long. 109°35′55″ W.; to lat. 37°04′41″ N., long. 109°38′16″ W.; to lat. 36°57′10″ N., long. 108°55′03″ W.; to lat. 36°36′32″ N., long. 108°55′03″ W.; to lat. 36°20′35″ N., long. 108°47′12″ W.; to lat. 36°05′15″ N., long. 108°22′51″ W.; to lat. 36°14′38″ N., long. 107°40′25″ W.; to lat. 35°39′30″ N., long. 107°25′27″ W.; to lat. 35°11′08″ N., long. 110°03′48″ W.; to lat. 35°16′08″ N., long. 111°55′46″ W.; to lat. 35°24′00″ N., long. 112°00′00″ W.; to lat. 35°46′00″ N., long. 111°50′30″ W.; to lat. 36°25′15″ N., long. 111°30′15″ W.; to lat. 36°44′00″ N., long. 111°36′30″ W.; to lat. 37°24′45″ N., long. 111°52′45″ W.; to lat. 37°30′00″ N., long. 112°03′30″ W.; to lat. 37°50′39″ N., long. 112°24′51″ W.; to lat. 38°10′56″ N., long. 111°24′19″ W.; to lat. 38°28′51″ N., long. 110°38′05″ W.; to lat. 39°03′55″ N., long. 110°37′49″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on March 7, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center

[FR Doc. 2013–06303 Filed 3–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2013–N–0227]

Tobacco Product Manufacturing Practice; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to obtain input on recommendations for regulations on good manufacturing practice for tobacco products that were submitted to FDA by a group of 13 tobacco companies (tobacco companies' recommendations). FDA is establishing this docket to provide an opportunity for all interested parties to comment on the tobacco companies' recommendations and to share information that will improve FDA's understanding of the tobacco industry and its manufacturing operations.

DATES: Submit electronic or written comments on the tobacco companies' recommendations by May 20, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrea Bautista, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 877–287–1373, email: *andrea.bautista@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31; 123 Stat. 1776) was signed into law, amending the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and giving FDA authority to regulate tobacco product manufacturing, distribution, and marketing. The new provisions include, among other things, the authority to issue regulations related to tobacco product manufacturing practice in order to protect the public health and to assure that tobacco products are in compliance with the FD&C Act. Specifically, section 906(e) of the FD&C

Act (21 U.S.C. 387f(e)) provides that ''in applying manufacturing restrictions to tobacco, the Secretary shall * * * prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology.''

On January 10, 2012, a group of 13 tobacco companies submitted to FDA: (1) Recommendations for good manufacturing practice regulations, (2) a preamble to the recommended regulations, and (3) a cover letter with a meeting request (Ref. 1). The preamble, as noted in the cover letter, provides the participating tobacco companies' common perspective and interpretation of the recommended regulations. On May 2, 2012, representatives of the tobacco companies met with FDA to present an overview of their recommendations and their approach to developing them.

FDA is establishing a docket to provide an opportunity for all interested parties to comment on the tobacco companies' recommendations and to share information that will improve FDA's understanding of the tobacco industry and its manufacturing operations.

II. Comments

Interested persons may submit either electronic comments regarding the tobacco companies' recommendations to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.*

1. Recommendations for Tobacco Product Good Manufacturing Practices Regulation and Request for Meeting, submitted to FDA, January 10, 2012.

Dated: March 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06288 Filed 3–15–13; 11:15 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2013–0009; FRL–9791–8]

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 5, 2013, the Environmental Protection Agency (EPA) proposed a source-specific federal implementation plan (FIP) requiring the Navajo Generating Station (NGS), located on the Navajo Nation, to reduce emissions of oxides of nitrogen (NO_X) under the Best Available Retrofit Technology (BART) provision of the Clean Air Act (CAA or Act) in order to reduce visibility impairment resulting from NGS at 11 National Parks and Wilderness Areas. EPA provided a 90-day public comment period for the proposed rule that is scheduled to close on May 6, 2013. The Navajo Nation and other stakeholders have submitted requests to extend the comment period an additional 90 days to allow time for interested parties to explore alternatives to BART that provide additional flexibility and also ensure greater reasonable progress than would be achieved under BART. In today's action, EPA is extending the comment period an additional 90 days.

DATES: Comments on the proposed rulemaking published on February 5, 2013 (78 FR 8274) must be submitted no later than August 5, 2013.

ADDRESSES: Submit comments identified by docket number EPA–R09–OAR–2013–0009, by one of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

Email: r9ngsbart@epa.gov.

Mail or deliver: Anita Lee (Air–2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Hearings: EPA intends to hold public hearings, at least 30 days prior to the close of the comment period, to accept oral and written comments on the proposed rulemaking. EPA will provide notice and additional details related to the hearings in the **Federal Register**, on our Web site, and in the docket for this proposed rulemaking.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972–3958, *r9ngsbart@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', and ''our'' refer to EPA.

Table of Contents

I. Background
II. Today's Action

I. Background

NGS is a coal-fired power plant located on the Navajo Nation Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, Arizona. Emissions of NO_X from NGS affect visibility at 11 National Parks and Wilderness Areas that are

designated as Class I federal areas, mandated by Congress to receive heightened protection. NGS is subject to the BART requirement of the CAA and the Regional Haze Rule based on its age and its effects on visibility in Class I areas.[1]

On February 5, 2013, EPA proposed a BART determination to require NGS to achieve a nearly 80 percent reduction of its current overall NO_X emission rate. EPA also proposed an alternative to BART that would provide flexibility to NGS in the schedule for the installation of new post-combustion control equipment. EPA's proposed alternative to BART credits NGS for its early and voluntary installation of new combustion controls to reduce NO_X emissions beginning in 2009 and therefore achieves greater reasonable progress than BART.

In recognition that there may be other approaches that could result in equivalent or better visibility benefits than BART, as well as the singular importance of NGS to the Navajo Nation, Hopi Tribe, and other numerous tribes located in Arizona, EPA also outlined a framework for evaluating other alternatives to provide greater flexibility than EPA's proposed alternative to BART. EPA requested comment on Alternatives 2 and 3 that provide until 2025 or 2026 for compliance but would require the owners of NGS to implement additional emission reductions in order to assure greater reasonable progress than would otherwise be achieved under BART.

EPA encouraged a robust public discussion of our proposed BART determination and alternative, as well as Alternatives 2 and 3, and recognized the potential need for a supplemental proposal if Alternatives 2 or 3, or other approaches developed by other parties, are identified as meeting the needs of stakeholders and meeting the requirements of the CAA.

On February 15, 2013, Salt River Project (SRP), co-owner and operator of NGS, requested a 90-day extension of the public comment period. SRP stated that identifying and analyzing alternatives and discussing options with interested parties would require a significant amount of time. On February 21, 2013, the Central Arizona Water Conservation District (CAWCD) submitted a similar request for a 90-day extension of the comment period.[2] On March 1, 2013, the Navajo Nation also requested a 90-day extension of the comment period in order to allow the Navajo Nation the time and opportunity to participate with NGS owners and other stakeholders in examining the feasibility of additional alternatives, including Alternatives 2 and 3.

II. Today's Action

EPA recognizes that the stakeholder process, to develop viable alternatives to BART that provide additional flexibility to the owners of NGS while achieving more emission reductions to assure greater reasonable progress than BART, will require a significant amount of time. EPA also recognizes the critical importance of active participation by the Navajo Nation, the Hopi Tribe, and other affected tribes located in Arizona in the development of alternatives to BART. Therefore, EPA is extending the comment period by an additional 90 days.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 8, 2013.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2013–06196 Filed 3–18–13; 8:45 am]

BILLING CODE 6560–50–P

[1] Please refer to 78 FR 8274 (February 5, 2013) for additional background information related to NGS, regional haze and the protection of visibility at mandatory Class I federal areas, and the statutory and regulatory framework for addressing visibility impairment from sources located in Indian country.

[2] The CAWCD manages the Central Arizona Project, a water delivery system that relies on electricity from NGS to pump surface water from the Colorado River for use by numerous tribes in Arizona, as well as agricultural, municipal, and industrial water users. Please refer to 78 FR 8274 (February 5, 2013) for additional information about CAWCD and its relationship to NGS and tribes located in Arizona.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0884; EPA–R05–OAR–2012–0970 FRL–9790–1]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Cleveland-Akron-Lorain and Columbus 1997 8-Hour Ozone Maintenance Plan Revisions to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the request by Ohio to revise the Cleveland-Akron-Lorain and Columbus, Ohio, 1997 8-hour ozone maintenance air quality State Implementation Plans (SIPs) under the Clean Air Act to replace the previously approved motor vehicle emissions budgets with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) emissions model. Ohio submitted the SIP revision requests to EPA on October 30, 2012, and December 12, 2012, respectively.

DATES: Comments must be received on or before April 18, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0884 for Cleveland-Akron-Lorain or EPA–RO5–OAR–2012–0970 for Columbus, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are

received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: March 4, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–06209 Filed 3–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2013–0135; FRL–9791–5]

Designation of Areas for Air Quality Planning Purposes; State of California; Imperial Valley Planning Area for PM_{10} Clarification of Nonattainment Area Boundary

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to clarify the description of the Imperial Valley planning area, an area designated as nonattainment for the national ambient air quality standard for particulate matter with an aerodynamic diameter of a nominal 10 microns or less (PM_{10}). EPA is not proposing to change the boundaries of the PM_{10} area or the status of the area as a ''serious'' PM_{10} nonattainment area but is proposing to clarify the description of this partial county area in the Code of Federal Regulations.

DATES: Written comments must be received on or before April 18, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2013–0135 by one of the following methods:

1. Federal eRulemaking Portal, at *www.regulations.gov,* please follow the on-line instructions;

2. Email to *ward.laweeda @epa.gov;* or

3. Mail or delivery to La Weeda Ward, Air Division (AIR–1), U.S. Environmental Protection Agency, Region 9, 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: La Weeda Ward, Air Division (AIR–1), U.S. Environmental Protection Agency, Region 9, 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017, telephone number (213) 244–1812, or email *ward.laweeda@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the direct final rule, of the same title, which is located in the Rules section of this **Federal Register.** EPA is clarifying that the ''Imperial Valley planning area'' PM_{10} nonattainment area is that portion of Imperial County that is defined as follows: Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200 [1]; then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning. EPA is publishing this action as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for this action is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule, and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Dated: March 6, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–06199 Filed 3–18–13; 8:45 am]

BILLING CODE 6560–50–P

[1] Within Imperial County, the northeastern boundary of Hydrologic Unit #18100200 generally follows the crestline of the Chocolate Mountains.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[GN Docket No. 12–354; DA 13–298]

Commercial Operations in the 3550–3650 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Communications Commission extends the deadline for filing reply comments on its *Notice of Proposed Rulemaking* (*NPRM*), in this proceeding, which was published in the **Federal Register** at 78 FR 1188, January 8, 2013. Reply comments are now due on April 5, 2013.

DATES: Submit reply comments on or before April 5, 2013.

ADDRESSES: You may submit comments, identified by GN Docket No. 12–354; FCC 12–148, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Paul Powell, Attorney Advisor, Wireless Bureau's Mobility Division, at (202) 418–1613 or email at *Paul.Powell@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order (*Order*) in GN Docket No. 12–354, DA 13–298, adopted and released February 28, 2013, which extends the reply

comment filing deadline established in the *NPRM* published under FCC No. 12–148 at 78 FR 1188, January 8, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202)488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary

1. On December 12, 2012 the Commission released an *NPRM* in the above captioned proceeding proposing to create a Citizens Broadband Service in the 3.5 GHz Band for innovative small cell uses. The *NPRM* established February 20, 2013 as the deadline for comments and March 22, 2013 as the deadline for reply comments.

2. Following the release of the *NPRM,* the Wireless Telecommunications Bureau and Office of Engineering and Technology announced that they would hold a public workshop on the 3.5 GHz *NPRM* on March 13, 2013. As announced, the workshop will focus on small cell technology ''in the context of the 3.5 GHz Band as well as database and dynamic spectrum sharing technologies that could be utilized to managed access to the Band.'' The workshop will likely elicit detailed discussions about many aspects of the *NPRM,* and will take place only seven business days prior to the reply comment deadline. In the interest of developing a comprehensive record in response to the *NPRM,* including through the workshop and in response to ideas explored at the workshop, the Commission extends the reply deadline established in the *NPRM* for two weeks on its own motion. Accordingly, reply comments in the above-captioned proceeding are due April 5, 2013.

Ordering Clause

3. Pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), and pursuant to the authority delegated in sections 0.31, 0.51, 0.131, 0.241, 0.261, and 0.331 of the Commission's rules, 47 CFR 0.31, 0.51, 0.131, 0.241, 0.261, 0.331, *we extend* the reply comment deadline for the above proceeding as discussed herein

4. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, and 0.331.

5. A copy of the *NPRM,* including the Initial Regulatory Flexibility Analysis, *has been sent* to the Chief Counsel of Advocacy of the Small Business Administration.

Federal Communications Commission.

Ruth Milkman,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 2013–06315 Filed 3–18–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0054; 4500030113]

Endangered and Threatened Wildlife and Plants; Status Review of the West Coast Distinct Population Segment of the Fisher as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of an information gathering period regarding the status of the fisher (*Martes pennanti*) throughout the range of its West Coast distinct population segment (DPS) in the United States. The status review will include analysis of whether the West Coast DPS of the fisher warrants listing as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). We encourage interested parties to provide us information regarding the status of, and any potential threats to, the West Coast DPS of the fisher.

DATES: We will consider information received or postmarked on or before May 3, 2013. Information 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: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R8–ES–2013–0054, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0054; 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 information only by the methods described above. We will post all submitted information on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Erin Williams, Field Supervisor, or Nadine Kanim, at the Yreka Fish and Wildlife Office, 1829 S. Oregon St., Yreka, CA 96097; by telephone (530) 842–5763; or by facsimile (530) 842–4517. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

This document solicits biological, economic, or other data on the status of, and potential threats to, the West Coast DPS of the fisher, a medium sized mammal of the mustelid family. This information, along with other sources of data, will be used to determine if the West Coast DPS of the fisher warrants listing as endangered or threatened under the Act (16 U.S.C. 1531 *et seq*). We request any new information concerning the status of the West Coast DPS of the fisher. Information already submitted since 2004 (see species assessment: *http://ecos.fws.gov/docs/candidate/assessments/2013/r8/A0HS_V01.pdf*) will be considered and need not be resubmitted. We will base our status review on the best scientific and commercial information available, including all information received as a result of this document. We are soliciting information and supporting data through this 45-day period to gain additional information and specifically seek information on the following:

(1) Information regarding the species' historical and current population status, distribution, abundance, and trends; biology and ecology; and habitat selection.

(2) Information on the effects of potential threat factors that are the basis for a species' listing determination under section 4 (a) of the Act (16 U.S.C. 1533(a)), which are:

(a) The present or threatened destruction, modification, or

curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) Inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

(3) Scientific and commercial data to assist in development of any proposed critical habitat designation that we may make, including:

(a) Habitat selection and use, and any changes or trends in the amount and distribution of habitat for the West Coast DPS of the fisher;

(b) Habitat requirements for feeding, breeding, and sheltering, including particular physical or biological features that are essential to the conservation of the species and where such physical or biological features are found;

(c) Whether any of these features may require special management considerations or protection;

(d) What areas that are currently occupied and contain the physical or biological features essential to the conservation of the species should be included in the critical habitat designation and why;

(e) What areas not currently occupied at the time of listing are essential for the conservation of the species and why;

(f) The possible benefits and impacts (including economic impacts) of a possible critical habitat designation for the West Coast DPS of the fisher; and

(g) Whether the designation of critical habitat for the West Coast DPS of the fisher would be beneficial to the conservation of the species or whether the identification of specific areas as critical habitat may increase threats to the species or its habitat.

(4) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(5) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(6) Information on land use designations and current or planned activities in the areas occupied by the West Coast DPS of the fisher or areas that may be important for their conservation, and possible impacts of these activities on this species and these areas.

(7) Information on the projected and reasonably likely impacts of climate change on the West Coast DPS of the fisher population and its habitat.

(8) Information on any foreseeable economic, national security, or other relevant impacts that may result if we designate any area as critical habitat. We are particularly interested in any potential impacts on small entities, and the benefits of including or excluding areas from any possible future proposed designation that are subject to these impacts.

Please support submissions with documentation such as maps, bibliographic references, methods used to gather and analyze the data, or copies of pertinent publications, reports, or letters by knowledgeable sources. We request data from systematic surveys, studies or analysis of data regarding population size or trends, biology or ecology of the species, effects of current land management on population distribution and abundance, current condition of habitat, and conservation measures that have been implemented to benefit the species. We also request information on the current distribution of populations and threats to the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act).

Comments merely stating support for or opposition to a particular action without providing supporting data may not meet the standard of information required by section 4(b)(1)(A) of the Act, which directs that determinations as to whether any species is a endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue either a not-warranted finding or proposed rules for listing and critical habitat, as provided in section 4(b)(3)(B) of the Act.

You may submit your comments and materials concerning this status review by one of the methods listed in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* 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.

Comments and materials we receive, as well as supporting documentation we use in preparing this document, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

This status review is being initiated as part of a multidistrict litigation settlement agreement under which the Service agreed to submit a proposed rule or a not-warranted finding to the **Federal Register** for the West Coast DPS of the fisher no later than the end of Fiscal Year 2014 (*In re Endangered Species Act Section 4 Deadline Litigation,* Misc. Action No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C.). The settlement agreement also provides that if we pursue listing of the West coast DPS of the fisher, we concurrently designate critical habitat for that DPS.

On April 8, 2004, we published a 12-month finding in the **Federal Register** stating that listing the fisher under the Act is warranted but precluded by other higher priority actions (69 FR 18770). We have annually reviewed this finding and monitored the status of the fisher, as required under 16 U.S.C. 1533(b)(3)(C)(i) and (iii), as reflected in the annual Candidate Notices of Review (CNORs). See the November 21, 2012, **Federal Register** (77 FR 69994) for the most recent CNOR. The Center for Biological Diversity challenged our expeditious progress in making a listing determination for the fisher (*Center for Biological Diversity, et al.* v. *Salazar, et al.,* No. 3:10-cv-01501–JCS, N.D. Cal.); this challenge was resolved by a joint stipulation of dismissal based on the settlement of the multidistrict litigation referenced above. For additional information on the West Coast DPS of the fisher, please see our April 8, 2004, notice of 12-month finding (69 FR 18770); the November 21, 2012, CNOR (77 FR 69994); or the species profile page at: *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A0HS.*

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 5, 2013.

Rowan W. Gould,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–06214 Filed 3–18–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 78, No. 53

Tuesday, March 19, 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

Forest Service

Notice of New Fee Site

AGENCY: Rio Grande National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447).

SUMMARY: The Rio Grande National Forest is proposing to add a cabin for rent to the public for a $50 fee for the overnight rental. It was recently renovated and has public interest in utilizing the facility. Rentals of other cabins on the Rio Grande National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used to continued operations and maintenance of Duncan Cabin. People are invited to comment on this proposal.

DATES: Send any comments about these fee proposals by October 1, 2013 so comments can be compiled, analyzed and shared with a Recreation Resource Advisory Committee. Duncan Cabin will become available for recreation rental July 15, 2014 pending recommendations from the Colorado Recreation Resource Advisory Committee.

ADDRESSES: Forest Supervisor, Rio Grande National Forest, 1803 West Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Jim Pitts, Saguache District Ranger, 719–655–2547.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Duncan cabin is located in the Rio Grande National Forest, part of the ghost-town of Duncan, 12 miles southeast of Crestone, CO in the foothills of the Sangre De Cristo Wilderness. A cooperative project with HistoriCorp conducted a restoration project of the cabin. Deteriorated sill logs and the log crib were repaired with epoxy or replaced, as necessary, wood flooring was installed and the foundation stabilized, and the roof had wood decking replaced and was re-roofed with cedar shingles. The project was completed in September of 2011.

Dated: March 7, 2013.

James Pitts,

Saguache District Ranger.

[FR Doc. 2013–06270 Filed 3–18–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Coastal Ocean Program Grants Proposal Application Package.

OMB Control Number: 0648–0384.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 300.

Average Hours per Response: Abstract, current and pending funding, and key contacts forms, 30 minutes each; annual progress reports, 5 hours; final reports, 10 hours.

Burden Hours: 1,050.

Needs and Uses: This request is for revision and extension of a currently approved information collection. The National Oceanic and Atmospheric Administration's Coastal Ocean Program (COP) provides direct financial assistance through grants and cooperative agreements for research supporting the management of coastal ecosystems. The statutory authority for COP is Public Law 102–567 Section 201 (Coastal Ocean Program). In addition to standard government application requirements, applicants for financial assistance are required to submit a project summary form, current and pending form and a key contacts form. Recipients are required to file annual progress reports and a project final report using COP formats. All of these requirements are needed for better evaluation of proposals and monitoring of awards.

This request is for a revision due to the addition of the Key Contacts and the Current and Pending Federal Support forms. These additional forms are necessary for consistency. The main purpose of this information collection is to enable COP to provide a summary of the key applicant contacts and their current and pending Federal funding. The information gathered will enable COP to properly and quickly evaluate proposals in a collaborative environment with its partner agencies.

Affected Public: Not-for-profit institutions; state, local and tribal governments; individuals or households; business or other for-profit organizations.

Frequency: One time and annually.

Respondent's Obligation: Required to obtain or maintain benefits.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov*.

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 *OIRA_Submission@omb.eop.gov*.

Dated: March 13, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–06207 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of State Government Research & Development

OMB Control Number: 0607–0933.

Form Number(s): State Coordinator Web Form, State Agency Web Form.

Type of Request: Extension of a currently approved collection.

Burden Hours: 542.

Number of Respondents: 552.

Average Hours Per Response: State Coordinators—4 hours; State Agencies—1 hour and 45 minutes.

Needs and Uses: The Census Bureau is requesting a three year extension of the collection of state government research and development (R&D) expenditures conducted by the Census Bureau on behalf of the National Science Foundation (NSF). The NSF Act of 1950 includes a statutory charge to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government.'' Under the aegis of this legislative mandate, NSF and its predecessors have sponsored surveys of R&D since 1953, including since 2006 the State Government R&D Survey. This survey has helped to expand the scope of R&D collections to include state governments, where previously there had been no established collection efforts.

NSF sponsors surveys of R&D activities of Federal agencies, higher education institutions, and private industries. The data collected from this survey instrument fills the void that previously existed for collection of R&D activities at the state government department or agency level. The results of these surveys provide a consistent information base for government officials, industry professionals, and researchers to use in formulating public policy and planning in science and technology. These surveys allow for the analysis of current and historical trends in research and development in the U.S., as well as, comparisons with other countries.

The Census Bureau, serving as collection agent, employs a methodology similar to the one used to collect information from state and local governments on established censuses and surveys. This methodology involves identifying a central coordinator in each state who will assist Census Bureau staff in identifying appropriate state departments/agencies to survey. These state contacts also verify data responses and assist with nonresponse follow-up. The collection approach using a central state contact is used successfully at the Census Bureau in surveys of local school districts, municipal and county governments, and state government finances.

Items on the survey form include R&D expenditures according to the source of funding, by performer of the work (i.e., internal and external to state agencies), by type (e.g., agriculture, energy, health, transportation, etc.), by character of work (i.e., basic research, applied research, or developmental), and by R&D plant (e.g., construction projects). Final results produced by NSF contain state and national estimates and are useful to a variety of data users interested in research and development performance including: The National Science Board; the Office of Management and Budget (OMB); the White House Office of Science and Technology Policy (OSTP) and other science policy makers; institutional researchers; and private organizations.

Legislators, policy officials, and researchers rely on statistics to make informed decisions about R&D investment at the Federal, state, and local level. These statistics are derived from the existing NSF sponsored surveys of Federal agencies, higher education institutions, and private industry. The total picture of R&D expenditures, however, had been incomplete due to the lack of relevant and timely data from state governments prior to this survey collection, which now fills that void.

State government officials and policy makers garner the most benefit from the results of this survey. Governors and legislatures need a reliable, comprehensive source of data to help in evaluating how best to attract the high-tech, R&D industries to their state. Officials are able to evaluate their investment in R&D based on comparisons with other states. These comparisons include the sources of funding, the type of R&D being conducted, and the actual performer of the work.

The information collected from the State Government R&D Survey is used at the Federal level to assess and direct investment in technology and economic issues. Congressional committees and the Congressional Research Service use results of the R&D surveys extensively. Inquiries made to NSF by congressional staff concerning industry and academic data are well documented. In addition, officials from several Federal agencies make use of the data.

NSF also uses data from this survey in various publications produced about the state of R&D in the U.S. The Science and Engineering Indicators series, for example, is a biennial report mandated by Congress and describes quantitatively the condition of the country's R&D efforts. Results are also likely to be included in the National Patterns of Research and Development Resources tabulations and in the Science and Engineering Indicators report.

The availability of state R&D data on the Internet makes this survey visible to several other users, as well. Media, university researchers, nonprofit organizations, and foreign government officials are also consumers of state R&D statistics. All users are able to utilize this information in an attempt to better understand the nation's R&D resources.

Affected Public: State, local or Tribal Government.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 8(b).

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: March 13, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–06211 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–815, A–580–816, C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') orders on corrosion-resistant carbon steel flat products (''CORE'') from Germany and the Republic of Korea (''Korea'') and the countervailing duty (''CVD'') order on CORE from Korea would not be likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department of Commerce (the ''Department'') is revoking these AD and CVD orders.

DATES: *Effective Date:* February 14, 2012.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2012, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated the third sunset reviews of the AD orders on CORE from Germany and Korea and the CVD order on CORE from Korea.[1] On January 4, 2012, pursuant to section 752 of the Act, the ITC instituted the third sunset reviews of the AD orders on CORE from Germany and Korea and the CVD order on CORE from Korea.[2]

As a result of its reviews, on May 10, 2012 and December 6, 2012, respectively, the Department found that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy and the AD orders would likely lead to continuation or recurrence of dumping. The Department thus notified the ITC of the magnitude of the margins of dumping and the subsidy rates likely to prevail were the orders revoked.[3]

On March 11, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the AD and CVD orders on CORE from Germany and Korea would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.[4]

Scope of the Orders

The products subject to the orders include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the orders are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Excluded from the scope of the orders are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of the orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the orders are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Further, the Department made three changed circumstances determination with respect to the order on Germany. The Department partially revoked the order with respect to deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140.[5] The Department also partially revoked the order with respect to certain wear plate products.[6] In addition, the Department partially revoked the order with respect to the following products: certain corrosion-resistant carbon steel from Germany, meeting the following description: electrolytically zinc coated flat steel products, with a coating mass between 35 and 72 grams per meter squared on each side; with a thickness range of 0.67 mm or more but not more than 2.95 mm and width 817 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.25, manganese not over 0.9, phosphorous not over 0.025, sulfur not over 0.012, chromium

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 85 (January 3, 2012).

[2] *See Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea: Institution of Five-Year Reviews Concerning the Countervailing Duty Order on Corrosion-Resistant Carbon Steel Flat Products From Korea and the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea,* 77 FR 301 (January 4, 2012).

[3] *See Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order,* 77 FR 27438 (May 10, 2012) and *Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Final Results of Full Sunset Reviews,* 77 FR 72827 (December 6, 2012).

[4] *See Determinations: Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea,* 78 FR 15376 (March 11, 2013) and *Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea,* Investigation Nos. 701–TA–350 and 731–TA–616 and 618 (Third Review) USITC Publication 4388 (March 2013).

[5] *See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany,* 64 FR 51292 (September 22, 1999).

[6] *See Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders In Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada and Germany,* 71 FR 14498 (March 22, 2006).

not over 0.1, titanium not over 0.005 and niobium not over 0.05; with a minimum yield strength of 310 Mpa and a minimum tensile strength of 390 Mpa; additionally coated on one or both sides with an organic coating containing not less than 30 percent and not more than 60 percent zinc and free of hexavalent chrome.[7]

The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Revocation

As a result of the determinations by the ITC that revocation of these AD and CVD orders would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department is revoking the AD order on CORE from Germany and the AD and CVD orders on CORE from Korea. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is February 14, 2012 (*i.e.,* the fifth anniversary of the effective date of publication in the **Federal Register** of the previous continuation of these orders).[8]

Cash Deposits and Assessment of Duties

The Department will notify U.S. Customs and Border Protection (''CBP''), 15 days after publication of this notice, to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after February 14, 2012. The Department will further instruct CBP to refund with interest all cash deposits on entries made on or after February 14, 2012. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and/or countervailing duty deposit requirements and assessments. The Department will complete any pending or requested administrative reviews of these orders covering entries prior to February 14, 2012.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These five-year (sunset) reviews and notice are in accordance with section 751(d)(2) the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 12, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–06289 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006).

[8] *See Continuation Pursuant to Second Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea,* 72 FR 7009 (February 14, 2007).

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–2 Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 18, 2013. The amendments will become effective as proposed on April 18, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: OEDRecords@uspto.gov.* Include ''Privacy Act PAT–TM–2 comment'' in the subject line of the message.
- *Fax:* (571) 273–0074, marked to the attention of the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Mail:* Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–4097.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on attorneys and agents who are, or have been, registered or recognized to practice before the USPTO in patent matters; attorneys engaged in practice before the USPTO in trademark and other non-patent matters; and applicants and former applicants for such registration or recognition to practice. The Privacy Act notice is being updated with additional departmental information for the system manager. The descriptions of the categories of individuals covered by the system and the purpose of the system have been revised to clarify that the system includes records for registered, recognized, and authorized practitioners. The description of the routine uses of records maintained in the system has been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The description of retrievability has been revised to indicate that records may be retrieved by indicators other than name and registration number.

The Privacy Act system of records notice, ''COMMERCE/PAT–TM–2 Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents,'' was previously published at 70 FR 69522 (November 16, 2005). The amended system of records notice is being renamed ''COMMERCE/PAT–TM–2 Complaints, Investigations and Disciplinary Proceedings Relating to Attorneys and Agents Registered or Recognized to Practice Before the Office'' and is published in its entirety below.

COMMERCE/PAT–TM–2

SYSTEM NAME:

Complaints, Investigations and Disciplinary Proceedings Relating to Attorneys and Agents Registered or Recognized to Practice Before the Office.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Enrollment and Discipline, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; Office of the Solicitor, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and agents registered, recognized, or authorized to practice before the United States Patent and Trademark Office (USPTO) in patent matters, attorneys engaged in practice before the USPTO in trademark and other non-patent matters, attorneys appearing before the USPTO, and excluded or suspended attorneys and agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints and information obtained during investigations and quasi-judicial disciplinary proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 2.

PURPOSE(S):

To carry out the duties of the USPTO under 35 U.S.C. 2(b)(2)(D), in particular, for the enrollment and recognition of individuals to practice as attorneys and agents before the USPTO in patent, trademark, and other non-patent matters and to aid the enforcement of statutes and regulations regarding the conduct of attorneys and agents admitted, recognized, or authorized to practice before the USPTO.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1) Routine uses will include dissemination of information concerning the complaint, investigation, or disciplinary proceeding may be made to the complainant and to persons who can reasonably be expected to provide information needed in connection with the complaint, investigation, or disciplinary proceeding. Notice of filing of a disciplinary complaint may be publicly disclosed. Upon a final order reprimanding, suspending, or excluding an attorney or agent, the records in this system may be publicly disclosed.

(2) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(3) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(4) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the United States Patent and Trademark Office, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the United States Patent and Trademark Office employees.

(5) Routine uses will include the Prefatory Statement of General Routine Uses Nos. 1–5 and 8–13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and machine-readable storage media.

RETRIEVABILITY:

Filed by name, registration number, or other retrievable indicators. The files are searchable in a database available only to authorized staff members of the Office of Enrollment and Discipline.

SAFEGUARDS:

Records are located in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access. The electronic files are password protected and can only be accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series record schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought in accordance with the procedures for making inquiries appearing in 37 CFR 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individuals, client(s) of same, registered or recognized attorneys and agents, witnesses in disciplinary proceedings, court opinions, and other individuals furnishing information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempt from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

Dated: March 14, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–06255 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–14 Users of Public Facilities of the Patent and Trademark Office.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 18, 2013. The amendments will become effective as proposed on April 18, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: psf@uspto.gov.* Include ''Privacy Act PAT–TM–14 comment'' in the subject line of the message.
- *Fax:* (571) 273–0020, marked to the attention of Director, Public Search Services Division.
- *Mail:* Director, Public Search Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha Sneed, ATTN: Public Search Facility, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (703) 756–1236.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on users of the USPTO Public Search Facility. The Privacy Act notice is being updated with current address information for the system location and system manager. The description of the categories of records in the system is being revised to remove information that is no longer being collected, including user photographs, registration numbers (for those registered to practice before the USPTO), and information from government-issued identification cards. The description of the routine uses of records maintained in the system has been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The rule references for the notification procedure and contesting record procedures are being updated to correspond to the current statutes and rules for those items as related to the USPTO.

The Privacy Act system of records notice, ''COMMERCE/PAT–TM–14 Users of Public Facilities of the Patent and Trademark Office,'' was previously published at 64 FR 72640 (December 28, 1999). The amended system of records is published in its entirety below.

COMMERCE/PAT–TM–14

SYSTEM NAME:

Users of Public Facilities of the Patent and Trademark Office.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Public Search Facility, United States Patent and Trademark Office, Madison East 1st Floor, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees other than employees of the United States Patent and Trademark Office (USPTO); employees and other representatives of commercial firms offering patent search services to the public; registered agents before the USPTO; and any member of the general public who uses the search room.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; addresses; telephone numbers; business firm or other organizations with which affiliated; user access number; record of use; violations of policies governing use of the search facilities and other office areas; signature of recipients of user access number; and other information as needed to establish identity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

To manage user access to the materials provided at USPTO Public Facilities in order to ensure that the materials are preserved and sufficient resources are allocated to serve the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Routine uses will include disclosure of information to law enforcement authorities, employers of violators of regulations governing use of the search room, and organizations with which recipients of user passes claim affiliation. Information such as home address or business affiliation, on individuals who have removed, with proper authority, patent documents from the search room but have failed to return such documents, may be used in retrieving such documents.

(2) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(3) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(4) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the United States Patent and Trademark Office, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the United States Patent and Trademark Office employees.

(5) Routine uses will include the Prefatory Statement of General Routine Uses Nos. 1–5 and 9–13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage.

RETRIEVABILITY:

Alphabetically by name and sequentially by user access number. Also, electronic sort by data element.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access. The electronic files are password protected and can only be accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Public Search Facility, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–3275.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR part 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought in accordance with the procedures for making inquiries appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individual, employers, and those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 14, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–06262 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–5 Non-Registered Persons Rendering Assistance to Patent Applicants.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 18, 2013. The amendments will become effective as proposed on April 18, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: OEDRecords@uspto.gov.* Include ''Privacy Act PAT–TM–5 comment'' in the subject line of the message.
- *Fax:* (571) 273–0074, marked to the attention of the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Mail:* Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–4097.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on persons other than registered or recognized attorneys or agents who have offered various services to inventors, patent applicants, and patentees. The Privacy Act notice is being updated with additional departmental information for the system location and system manager. The descriptions of the categories of individuals covered by the system and the purpose of the system have been revised to clarify that the system includes records for persons other than registered and recognized practitioners. The description of the routine uses of records maintained in the system has been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The description of retrievability has been revised to indicate that records may be retrieved by indicators other than name and registration number through a searchable database. The description of record source categories has been revised to clarify the sources of the information contained in this system.

The Privacy Act system of records notice, ''COMMERCE/PAT–TM–5 Non-Registered Persons Rendering Assistance to Patent Applicants,'' was previously published at 70 FR 69521 (November 16, 2005). The amended system of records notice is published in its entirety below.

COMMERCE/PAT–TM–5

SYSTEM NAME:

Non-Registered Persons Rendering Assistance to Patent Applicants.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Enrollment and Discipline, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; Office of the Solicitor, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than registered or recognized attorneys or agents who have offered or rendered, for payment, various services to inventors, patent applicants, and patentees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Declarations of assistance received and other reports or complaints, including names and addresses, of persons rendering services, and information obtained and used for investigatory and law enforcement purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 2.

PURPOSE(S):

To carry out the duties of the USPTO under 35 U.S.C. 2(b)(2)(D), in particular, the enrollment and recognition of individuals to practice as attorneys and agents before the USPTO in patent, trademark, and other non-patent matters; and to maintain complaints, reports, and other information on persons other than registered or recognized attorneys or agents who have offered services to inventors, patent applicants, and patentees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Routine uses will include providing notice to patent applicants regarding whether or not the persons from whom assistance was received are registered or recognized to practice before the USPTO. Used for investigative purposes.

(2) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(3) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(4) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the United States Patent and Trademark Office, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the United States Patent and Trademark Office employees.

(5) Routine uses will include the Prefatory Statement of General Routine Uses Nos. 1–5, 8–10, and 13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and machine-readable storage media.

RETRIEVABILITY:

Filed by name, registration number or other retrievable indicators. The files are searchable in a database available only to authorized staff members of the Office of Enrollment and Discipline.

SAFEGUARDS:

Records are located in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access. The electronic files are password protected and can only be accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series record schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought in accordance with the procedures for making inquiries appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individual, references, and other individuals furnishing information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempt from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

Dated: March 14, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–06256 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–20 Customer Call Center, Assistance and Satisfaction Survey Records.'' This action is being taken to

update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 18, 2013. The amendments will become effective as proposed on April 18, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: Richard.Fernandez@uspto.gov.* Include ''Privacy Act PAT–TM–20 comment'' in the subject line of the message.
- *Fax:* (571) 273–1180, marked to the attention of Richard Fernandez.
- *Mail:* Richard Fernandez, Office of Patent Information Management, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Fernandez, Office of Patent Information Management, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–1180.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on individuals who request information or assistance through the agency's telephone support system or customer service centers. The Privacy Act notice is being updated with the current office information for the system manager. The description of the routine uses of records maintained in the system has been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices.

The amended Privacy Act system of records notice, ''COMMERCE/PAT–TM–20 Customer Call Center, Assistance and Satisfaction Survey Records,'' is published in its entirety below.

COMMERCE/PAT–TM–20

SYSTEM NAME:

Customer Call Center, Assistance and Satisfaction Survey Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Information Officer, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public, employees, contractors, and other individuals requesting information or assistance through the agency call centers and customer service centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer name, company name, email address, telephone and fax numbers, mailing address, date and time of contact, agent name, customer number, description and resolution of the problem or request, customer contact experience and satisfaction, service recommendations, and desire to be contacted to discuss survey results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 35 U.S.C. 2, and E.O. 12862.

PURPOSE(S):

To carry out the duties of the USPTO as outlined in 35 U.S.C. 2 concerning the dissemination of information, i.e., facilitating communications and providing quality assistance services upon individual user request. This system serves as a controlled repository for call center and customer data. The USPTO also uses this information to obtain customer feedback concerning their service experience and the level of satisfaction provided by the agency's Electronic Business Center.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The USPTO may use the information contained in this system of records to contact customers regarding their survey responses and comments.

In addition to the routine uses in the Prefatory Statement of General Routine Uses, Nos. 1–5, 9–10, and 12–13, as found at 46 FR 63501–63502 (December 31, 1981):

(1) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(2) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(3) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the USPTO, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the USPTO employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On electronic media.

RETRIEVABILITY:

By individual's name or other identifier such as email address or telephone number.

SAFEGUARDS:

Maintained in areas accessible only to authorized personnel in a building protected by security guards during nonbusiness hours. Systems are password protected.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Patent Electronic Business Center, Office of Patent Information Management (OPIM), United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought in accordance with the procedures for making inquiries appearing in 37 CFR 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individuals and those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 14, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–06263 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–1 Attorneys and Agents Registered to Practice Before the Office.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 18, 2013. The amendments will become effective as proposed on April 18, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *OEDRecords@uspto.gov.* Include ''Privacy Act PAT–TM–1 comment'' in the subject line of the message.
- Fax: (571) 273–0074, marked to the attention of the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.
- Mail: Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.
- Federal Rulemaking Portal: *http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–4097.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on attorneys and agents who are, or have been, registered or recognized to practice before the USPTO in patent matters, as well as applicants and former applicants for such registration or recognition to practice. The Privacy Act notice is being updated with additional departmental information for the system manager. The description of the categories of individuals covered by the system has been revised to clarify that the system includes records for both registered and recognized practitioners. The description of the routine uses of records maintained in the system has been revised to indicate where information may be published and disseminated, and to update the routine uses to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The description of retrievability has been revised to indicate that records may be retrieved by indicators other than name and registration number.

The Privacy Act system of records notice, ''COMMERCE/PAT–TM–1 Attorneys and Agents Registered to Practice Before the Office,'' was previously published at 70 FR 69520 (November 16, 2005). The amended system of records is being renamed ''COMMERCE/PAT–TM–1 Attorneys and Agents Registered or Recognized to Practice Before the Office'' and is published in its entirety below.

COMMERCE/PAT–TM–1

SYSTEM NAME:

Attorneys and Agents Registered or Recognized to Practice Before the Office.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Enrollment and Discipline, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; Office of the Solicitor, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and agents who are, or have been, registered or recognized to practice before the United States Patent and Trademark Office (USPTO) in patent, trademark, and other non-patent matters, and applicants and former applicants for such registration or recognition to practice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information, personal and professional qualifications, character and fitness report, investigations of an applicant's suitability or eligibility for registration to practice before the USPTO, undertakings of former patent examiners, current address, and status information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 2.

PURPOSE(S):

To carry out the duties of the USPTO under 35 U.S.C. 2(b)(2)(D), in particular, for the enrollment and recognition of individuals to practice as attorneys and agents before the USPTO in patent, trademark, and other non-patent matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Routine uses will include publishing and disseminating a public roster including an address of record, law firm or company affiliation, telephone number, and registration number of the active registered individuals on the USPTO Web site; registration status is disseminated upon inquiry; and information may be published on the USPTO Web site or otherwise disclosed to solicit information regarding an applicant's suitability and eligibility for registration to practice before the USPTO.

(2) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(3) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(4) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the U.S. Patent and Trademark Office, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the U.S. Patent and Trademark Office employees.

(5) Routine uses will include the Prefatory Statement of General Routine Uses Nos. 1–5 and 8–13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and machine-readable storage media.

RETRIEVABILITY:

Filed by name, registration number, or other retrievable indicators. The files are searchable in a database available only to authorized staff members of the Office of Enrollment and Discipline.

SAFEGUARDS:

Records are located in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access. The electronic files are password-protected and can only be accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR part 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought in accordance with the procedures for making inquiries appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individual, references, and other individuals furnishing information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempt from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

Dated: March 14, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–06254 Filed 3–18–13; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0015]

Submission for OMB Review; Comment Request: Testing and Recordkeeping Requirements Under the Standard for the Flammability (Open Flame) of Mattresses

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for approval of information collection requirements in the Standard for the Flammability—Open Flame—of Mattresses Sets, 16 CFR part 1633.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by April 18, 2013.

ADDRESSES: To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified by Docket No. CPSC–2009–0015. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2009–0015, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814;

telephone: 301–504–7923 or by email to *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 4, 2013 (78 FR 694), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Standard for the Flammability (Open Flame) of Mattresses Sets, 16 CFR part 1633. No comments were received in response to that notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the OMB a request for extension of approval of that collection of information without change.

The Mattress Open-Flame standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses, particularly those initially ignited by open-flame sources, such as lighters, candles, and matches. The Mattress Open-Flame standard prescribes a test to minimize or delay flashover when a mattress is ignited. The standard requires manufacturers to test specimens of each of their mattress prototypes before mattresses based on that prototype may be introduced into commerce.

The Mattress Open-Flame standard requires detailed documentation of prototype identification and testing records, model and prototype specifications, inputs used, name and location of suppliers, and confirmation test records, if establishments choose to pool a prototype. This documentation is in addition to documentation already conducted by mattress manufacturers in their efforts to meet the mattress cigarette standard under 16 CFR part 1632. CPSC staff estimates that there are 571 establishments producing conventional mattresses and 100 establishments producing nonconventional mattresses in the United States, for a total of 671 firms affected by this standard. CPSC staff estimates the recordkeeping requirements to take about 4 hours and 44 minutes per establishment, per qualified prototype. Although some larger manufacturers reportedly are producing mattresses based on more than 100 prototypes, most mattress manufacturers base their complying production on 15 to 20 prototypes.

Assuming that establishments qualify their production with an average of 20 different qualified prototypes, recordkeeping time is estimated to be 94.7 hours (4.73 hours × 20 prototypes) per establishment, per year. (However, pooling among establishments or using a prototype qualification for longer than 1 year will reduce this estimate). Accordingly, the annual recordkeeping time cost to all mattress producers is estimated at 63,521 hours (94.7 hours × 671 establishments). The hourly compensation for the time required for recordkeeping is $27.64 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' June 2012, Table 9, total compensation for all sales and office workers in goods-producing, private industries: *http://www.bls.gov/ncs*). Total estimated costs for recordkeeping are approximately $1.7 million (63,521 hours × $27.64). The estimated annual cost of information collection requirements to the federal government is approximately $717,954.

Dated: March 14, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–06273 Filed 3–18–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0031]

Agency Information Collection Activities; Comment Request; Fiscal Operations Report for 2012–2013 and Application To Participate for 2014–2015 (FISAP) and Reallocation Form

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 20, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0031 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fiscal Operations Report for 2012–2013 and Application to Participate for 2014–2015 (FISAP) and Reallocation Form.

OMB Control Number: 1845–0030.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments, Private Sector.

Total Estimated Number of Annual Responses: 4,258.

Total Estimated Number of Annual Burden Hours: 85,332.

Abstract: The data submitted electronically in the Fiscal Operations Report and Application to Participate (FISAP) through FISAP on the Web is used by the Department of Education to determine the institution's funding need for the award year and monitor program effectiveness and accountability of fund expenditures. The Reallocation form is part of FISAP on the Web. The Higher Education Amendments (HEA) requires that if an institution anticipates not using all of its allocated funds for the Perkins, Federal Work Study (FWS), and

Federal Supplemental Education Opportunity Grant (FSEOG) programs by the end of an award year, it must specify the anticipated remaining unused amount to the Secretary. In addition to renewing the expiration date, references to dates and award years dates have been updated on the forms and in the instructions for both documents. The FISAP form has been revised to use technology to gather existing data electronically from other sources requiring less data entry.

Dated: March 13, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–06237 Filed 3–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0067]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Evaluation of Math Professional Development

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 18, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0067 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Math Professional Development.

OMB Control Number: 1850—New.

Type of Review: New collection, request for a new OMB Control Number.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 1,260.

Total Estimated Number of Annual Burden Hours: 2,211.

Abstract: This package requests clearance to recruit and collect data from districts, schools, and teachers for a study of math professional development (PD). The study will provide important information about the implementation and impact of intensive, content-focused professional development on fourth grade teachers' content knowledge, classroom practice, and their students' achievement. The evaluation has an experimental design with teacher-level random assignment of a volunteer sample of approximately 200 fourth grade teachers in six districts to receive either the study's PD or the district's ''business-as-usual'' PD. Findings will be presented in a final report scheduled for release in February 2016.

Dated: March 12, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–06233 Filed 3–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0001]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Formula Grant for the Electronic Application System for Indian Education (EASIE)

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 18, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0001 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also

helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Formula Grant for the Electronic Application System for Indian Education (EASIE).

OMB Control Number: 1810–0021.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11,300.

Total Estimated Number of Annual Burden Hours: 9,590.

Abstract: The Office of Indian Education (OIE) of the Department of Education (ED) requests clearance for the Indian Education Formula Grant Application authorized under Title VII, Part A, Subpart 1 of the Elementary and Secondary Education Act, as amended (ESEA). The Indian Education Formula Grant (CFDA 84.060A), is not competitive or discretionary and requires the annual submission of the application from the Local Education Agency and or Tribe. The funds under this program assist applicants to provide Indian students with the opportunity to meet the same challenging state standards as all other students and meet the unique educational and culturally related academic needs of American Indian and Alaska Native students. The amount of the award for each applicant is determined by a formula based on the reported number of American Indian/Alaska Native students identified in the application, the state per pupil expenditure, and the total appropriation available. The information collection is also necessary to meet the Government Performance and Results Act (GPRA) requirements. The collection is authorized by section 7114(a) of the ESEA, 20 U.S.C. 7424(a), and by section 4 of the Government Performance and Results Act of 1993 (GPRA).

Dated: March 13, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–06235 Filed 3–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0052]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Educational Opportunity Centers Program (EOC) Annual Performance Report

AGENCY: Office of Secondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 18, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0052 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Educational Opportunity Centers Program (EOC) Annual Performance Report.

OMB Control Number: 1840—New.

Type of Review: New collection, request for a new OMB Control Number.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 128.

Total Estimated Number of Annual Burden Hours: 1,024.

Abstract: Educational Opportunity Centers grantees must submit the report annually. The reports provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide national information on project participants and program outcomes.

Dated: March 13, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–06236 Filed 3–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–9–000]

Commission Information Collection Activities; Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for comment.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection, FERC–730 (Report of Transmission Investment Activity), to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 77069, 12/31/2012) requesting public comments. FERC received no comments on the FERC–730 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by April 18, 2013.

ADDRESSES: Comments filed with OMB (identified by the OMB Control No. 1902–0239) should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–9–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–730: Report of Transmission Investment Activity.

OMB Control No.: 1902–0239

Type of Request: Three-year extension of the FERC–730 information collection requirements with no changes to the reporting requirements.

Abstract: Pursuant to Section 219 [1] of the Federal Power Act, the Commission issued FERC Order No. 679 [2], Promoting Transmission Investment Through Pricing Reform. In Order No. 679 FERC amended its regulations in 18 CFR 35.35 to establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities. The Commission intended the order to benefit consumers by ensuring reliability and to reduce the cost of delivered power by reducing transmission congestion. Order No. 679 also adopted an annual reporting requirement (FERC–730) for utilities that receive incentive rate treatment for specific transmission projects. The FERC–730 provides annual data on transmission capital expenditures as well as project status detail. The Commission requires that filers specify which projects are currently receiving incentives in the project detail table and that they group together those facilities receiving the same incentive. Specifically, in accordance with the statute, public utilities with incentive rates must file:

- Actual transmission investment for the most recent calendar year, and projected, incremental investments for the next five calendar years (in dollar terms); and
- a project by project listing that specifies for each project the most up to date, expected completion date, percentage completion as of the date of filing, and reasons for delays for all current and projected investments over the next five calendar years. Projects with projected costs less than $20 million are excluded from this listing.

To ensure that Commission rules are successfully meeting the objectives of Section 219, the Commission collects industry data, projections and related information that detail the level of investment. FERC–730 information regarding projected investments as well as information about completed projects allows the Commission to monitor the success of the transmission pricing reforms and to determine the status of critical projects and reasons for delay.

Type of Respondents: Public utilities that have been granted incentive based rate treatment for specific transmission projects under the provisions of 18 CFR 35.35(h) must file the FERC–730.

Estimate of Annual Burden: [3] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–730—REPORT OF TRANSMISSION INVESTMENT ACTIVITY

Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
63	1	63	30	1,890

The total estimated annual cost burden to respondents is $130,428.17 [1,890 hours ÷ 2080 [4] hours per year * $143,540/year [5] = $130,428.17].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those

[1] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594, 315 and 1283 (2005).

[2] RM06–4–000 (issued 7/20/2006), published: 71 FR 43294.

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] 2080 hours/year = 40 hours/week * 52 weeks/year.

[5] Average annual salary per employee in 2012.

who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06201 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–92–000]

Gulf South Pipeline Company, LP; Notice of Application

Take notice that on March 1, 2013, Gulf South Pipeline Company, LP (Gulf South), filed in Docket No. CP13–92–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon by sale to an affiliated company, Boardwalk Mississippi Intrastate Pipeline Company, LLC, approximately 511 miles of low/lower-pressure pipeline, consisting of 479 miles of transmission pipeline and 32 miles of gathering pipeline, associated meters, and appurtenant and auxiliary facilities located in Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Mr. J. Kyle Stephens, Vice-President, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas, 77046, or by calling (713) 479–8033 (telephone) or (713) 479–1846 (fax) *Kyle.Stephens@bwpmlp.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions 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.

Comment Date: April 2, 2013.

Dated: March 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06204 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–87–000]

Equitrans, L.P.; Equitable Gas Company, LLC; Notice of Application

Take notice that on March 1, 2013, Equitrans, L.P. (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, and Equitable Gas Company, LLC (EGC), 225 North Shore Drive, Pittsburgh, Pennsylvania 15212, jointly filed in Docket No. CP13–87–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting that the Commission grants approval to abandon, by transfer from Equitrans to EGC, a pipeline lateral designated as the H–153 Line and all equipment and associated appurtenances. Also, EGC requests that the Commission determines that, upon abandonment, the H–153 Line will provide local distribution service exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll

free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Paul W. Diehl, Senior Counsel-Midstream, EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222 at (412) 395–540 or by email at *PDiehl@eqt.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions 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: 5:00 p.m. Eastern Time on April 2, 2013.

Dated: March 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06205 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–88–000]

Notice of Application; Equitrans, L.P.

Take notice that on March 1, 2013, Equitrans, L.P. (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP13–88–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting the Commission authorize the abandonment, by transfer from Equitrans to Equitable Gas Company, LLC (EQC), of certain gathering facilities. Specifically, the gathering facilities consists of six pipeline laterals (M–23, M–25, M–30, M–31, M–32, and M–71), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Paul W. Diehl, Senior Counsel-Midstream, EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222 at (412)-395–540 or by email at *PDiehl@eqt.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of

this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions 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: 5:00 p.m. Eastern Time on April 2, 2013.

Dated: March 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06203 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–79–000.
Applicants: Atlantic Path 15, LLC.
Description: Application of Atlantic Path 15, LLC for Authorization under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Request for Expedited Consideration and Confidential Treatment.
Filed Date: 3/11/13.
Accession Number: 20130311–5080.
Comments Due: 5 p.m. ET 4/1/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–19–000.
Applicants: PATUA PROJECT LLC.
Description: Notice of Self-Certification of PATUA PROJECT LLC.
Filed Date: 3/11/13.
Accession Number: 20130311–5023.
Comments Due: 5 p.m. ET 4/1/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1064–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Amendment to PWRPA IA Appendix B and Filing of Mocho 4 WDT Service Agreement to be effective 3/12/2013.
Filed Date: 3/11/13.
Accession Number: 20130311–5000.
Comments Due: 5 p.m. ET 4/1/13.
Docket Numbers: ER13–1065–000.
Applicants: Northern States Power Company, a Minnesota corporation
Description: 2013–3–11_Brookings_CMA_536_0.0.0-Filing to be effective 1/13/2012.
Filed Date: 3/11/13.
Accession Number: 20130311–5070.
Comments Due: 5 p.m. ET 4/1/13.
Docket Numbers: ER13–1066–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: 2013–3–11_Brookings_OMA_537_0.0.0-Filing to be effective 1/13/2012.
Filed Date: 3/11/13.
Accession Number: 20130311–5074.
Comments Due: 5 p.m. ET 4/1/13.
Docket Numbers: ER13–1067–000.
Applicants: Northern States Power Company, a Minnesota corporation
Description: 2013–3–11–CAPX–TCEA–BRKGS–538–0.0.0-Filing to be effective 1/13/2012.
Filed Date: 3/11/13.
Accession Number: 20130311–5078.
Comments Due: 5 p.m. ET 4/1/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–344–000.
Applicants: Caterpillar Inc.
Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of Caterpillar Inc.
Filed Date: 3/8/13.
Accession Number: 20130308–5217.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06259 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–78–000.
Applicants: Plains End LLC, Plains End II, LLC, Rathdrum Power, LLC.
Description: Application of Plains End, LLC, et al. under FPA 203 and Requesting Expedited Treatment.
Filed Date: 3/8/13.
Accession Number: 20130308–5223.
Comments Due: 5 p.m. ET 3/29/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–18–000.
Applicants: Goldthwaite Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Goldthwaite Wind Energy LLC.
Filed Date: 3/7/13.
Accession Number: 20130307–5125.
Comments Due: 5 p.m. ET 3/28/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1059–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Amendment to Exhibit A of WDAT Service Agreement with SCE–RAP for CREST to be effective 5/8/2013.
Filed Date: 3/8/13.
Accession Number: 20130308–5174.
Comments Due: 5 p.m. ET 3/29/13.

Docket Numbers: ER13–1060–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2013–03–08 Transmission Constraint Relaxation to be effective 5/10/2013.
Filed Date: 3/8/13.
Accession Number: 20130308–5189.
Comments Due: 5 p.m. ET 3/29/13.

Docket Numbers: ER13–1061–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment H—Addendum 6—Lincoln Electric System to be effective 1/1/2013.
Filed Date: 3/8/13.
Accession Number: 20130308–5190.
Comments Due: 5 p.m. ET 3/29/13.

Docket Numbers: ER13–1062–000.
Applicants: Copper Mountain Solar 1, LLC.
Description: Copper Mountain Solar 1, LLC submits tariff filing per 35.13(a)(2)(iii: Copper Mountain Solar 1 LLC Joint Use Amendment to be effective 4/25/2013.
Filed Date: 3/8/13.
Accession Number: 20130308–5191.
Comments Due: 5 p.m. ET 3/29/13.

Docket Numbers: ER13–1063–000.
Applicants: Copper Mountain Solar 2, LLC.
Description: Copper Mountain Solar 2, LLC submits tariff filing per 35.13(a)(2)(iii: Copper Mountain Solar 2 LLC Concurrence to Joint Use Amendment to be effective 4/25/2013.
Filed Date: 3/8/13.
Accession Number: 20130308–5194.
Comments Due: 5 p.m. ET 3/29/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06258 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–80–000.
Applicants: Berry Petroleum Company.
Description: Berry Petroleum Company's Section 203 FPA Application.
Filed Date: 3/11/13.
Accession Number: 20130311–5180.
Comments Due: 5 p.m. ET 4/1/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–915–000.
Applicants: Pinpoint Power, LLC.
Description: Supplement to Notice of Cancellation of Tariff Record Associated with Market-Based Rate Tariff of Pinpoint Power, LLC.
Filed Date: 3/7/13.
Accession Number: 20130307–5191.
Comments Due: 5 p.m. ET 3/28/13.

Docket Numbers: ER13–1068–000.
Applicants: Southwest Power Pool, Inc.
Description: Revisions to Sections 19.4 and 32.4—Facilities Study Procedures to be effective 6/1/2013.
Filed Date: 3/11/13.
Accession Number: 20130311–5102.
Comments Due: 5 p.m. ET 4/1/13.

Docket Numbers: ER13–1069–000.
Applicants: MP2 Energy LLC.
Description: Market Based Rate Application to be effective 3/12/2013.
Filed Date: 3/11/13.
Accession Number: 20130311–5150.
Comments Due: 5 p.m. ET 4/1/13.

Docket Numbers: ER13–1070–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: Request for Expedited Approval of Potential Simultaneous Exchange Transaction to be effective 4/1/2013.
Filed Date: 3/11/13.
Accession Number: 20130311–5151.
Comments Due: 5 p.m. ET 4/1/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–325–000.
Applicants: IPS Power Engineering.
Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of IPS Power Engineering under QF13–325.
Filed Date: 03/05/13, 03/07/13.
Accession Number: 20130305–5082, 20130307–5150.
Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 12, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06264 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12778–004]

Fall Creek Hydro, LLC, Oregon; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for an original license to construct the Fall Creek Dam Hydroelectric Project and has prepared a draft environmental assessment (EA). The proposed 10-megawatt project would be located on Fall Creek in Lane County, Oregon, near the towns of Springfield and Eugene, at an existing dam operated by the U.S. Army Corps of Engineers. The proposed project, if licensed, would occupy a total of 6.53 acres of federal land.

The draft EA includes the staff's analysis of the potential environmental effects of licensing the project and concludes that licensing the project, with appropriate protective measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the draft 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, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free number 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 this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *http://www.ferc.gov/doc-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix ''Fall Creek Dam Hydroelectric Project, Project No. 12778–004'' to all comments.

Please contact Lee Emery by telephone at (202) 502–8379 or by email at *lee.emery@ferc.gov,* if you have any questions.

Dated: March 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06202 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1069–000]

MP2 Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of MP2 Energy LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is April 1, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive 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.

Dated: March 12, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06257 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14241–000]

Alaska Energy Authority; Notice of Dispute Resolution Panel Meeting and Technical Conference

On March 8, 2013, Commission staff, in response to the filing of a notice of

study dispute by the U.S. National Marine Fisheries Service (NMFS) on February 21, 2013, convened a single three-person Dispute Resolution Panel (Panel) pursuant to 18 CFR 5.14(d).

The Panel will hold a technical conference at the time and place identified below. The technical conference will address study disputes regarding three separate studies as approved in the Director's Study Plan Determination, issued February 1, 2013. The studies in dispute are: (1) Glacier and Runoff Changes Study (Study 7.7); (2) Salmon Escapement Study (Study 9.7); and (3) Fish Passage Study (Study 9.11).

The purpose of the technical session is for the disputing agency, applicant, and Commission to provide the Panel with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b).

If the number of participants wishing to speak creates time constraints, the Panel may, at its discretion, limit the speaking time for each participant.

Technical Conference

Date: Wednesday, April 3, 2013.

Time: 10:00 a.m.–4:00 p.m. (AKDT; UTC—8:00).

Place: Public Conference Room, Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska 99503.

Dated: March 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06200 Filed 3–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, DOE.

DATE AND TIME: March 21, 2013, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

992ND—MEETING: REGULAR MEETING

[March 21, 2013, 10:00 a.m.]

Item No	Docket No.	Company
		Administrative
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD12–12–000	Coordination Between Natural Gas and Electricity Markets.
		ELECTRIC
E–1	ER13–198–000	PJM Interconnection, L.L.C.
	ER13–195–000	Indicated PJM Transmission Owners.
	ER13–90–000	PJM Interconnection, L.L.C. and Public Service Electric and Gas Company.
E–2	ER13–187–000	Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners.
	ER13–187–001	
	ER13–186–000	
	ER13–89–000	MidAmerican Energy Company.
	ER13–101–000	American Transmission Company LLC.
	ER13–101–001	
	ER13–84–000	Cleco Power LLC.
	ER13–95–000	Entergy Arkansas, Inc.
E–3	ER13–75–000	Public Service Company of Colorado.
	ER13–77–000	Tucson Electric Power Company.
	ER13–78–000	UNS Electric, Inc.
	ER13–79–000	Public Service Company of New Mexico.
	ER13–82–000	Arizona Public Service Company.
	ER13–91–000	El Paso Electric Company.
	ER13–96–000	Black Hills Power, Inc.
	ER13–97–000	Black Hills Colorado Electric Utility Company, LP.

992ND—MEETING: REGULAR MEETING—Continued

[March 21, 2013, 10:00 a.m.]

Item No	Docket No.	Company
	ER13–105–000	NV Energy, Inc.
	ER13–120–000	Cheyenne Light, Fuel and Power Company.
E–4	ER12–1179–002	Southwest Power Pool, Inc.
E–5	RM12–4–000	Revisions to Reliability Standard for Transmission Vegetation Management.
E–6	RM12–19–000	Revisions to Modeling, Data, and Analysis Reliability Standard
E–7	RD12–3–000	North American Electric Reliability Corporation
E–8	ER13–780–002	New York Independent System Operator, Inc.
E–9	EL05–121–008	PJM Interconnection, L.L.C.
E–10	EL00–66–016 EL00–66–017	Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation
	EL95–33–011	Louisiana Public Service Commission v. Entergy Services, Inc.
E–11	RD12–5–000	North American Electric Reliability Corporation.
E–12	EL11–39–002	Gregory R. Swecker and Beverly F. Swecker v. Midland Power Cooperative and State of Iowa.
E–13	ER10–2156–002	Consumers Energy Company.
	ER12–420–001	
		GAS
G–1	RP10–729–000	Portland Natural Gas Transmission System.
G–2	RP08–306–002	Portland Natural Gas Transmission System.
G–3	RM12–14–000	Annual Charge Filing Procedures for Natural Gas Pipelines.
G–4	OR12–17–000	High Prairie Pipeline, LLC Complainant v. Enbridge Energy, Limited Partnership, Respondent.
G–5	OR13–6–000	Enbridge Pipelines (North Dakota) LLC.
G–6	OR13–10–000	Seaway Crude Pipeline Company LLC.
G–7	RP13–313–000	Essar Steel Minnesota, LLC v. Great Lakes Gas Transmission Limited Partnership.
		HYDRO
H–1	P–1975–101 P–1975–102 P–2061–085 P–2061–086	Idaho Power Company.
H–2	EL13–24–000	Power Site Reservation Fees Group.
	P–2114–256	Public Utility District No. 2 of Grant County, Washington.
	P–2145–115	Public Utility District No. 1 of Chelan County, Washington.
	P–2157–209	Public Utility District No. 1 of Snohomish County, Washington.
	P–2305–040	Sabine River Authority of Texas.
	P–2307–063	Alaska Electric Light and Power Company.
	P–2818–024	City and Borough of Sitka, Alaska.
	P–2911–036	Southeast Alaska Power Agency.
	P–3015–013	
	P–14241–003	Alaska Energy Authority.
		CERTIFICATES
C–1	OMITTED	
C–2	OMITTED	
C–3	CP06–407–007	Missouri Interstate Gas, LLC. Missouri Gas Company, LLC. Missouri Pipeline Company, LLC.

Issued March 14, 2013.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the

public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2013–06348 Filed 3–15–13; 11:15 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2013–0024]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP087801XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087801XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to China.

Brief non-proprietary description of the anticipated use of the items being exported:

To provide long-haul airline service between China and various international destinations.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company.

Obligor: Air China.

Guarantor(s): N/A.

Description of Items Being Exported

Boeing 777 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before April 15, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *www.regulations.gov*. To submit a comment, enter EIB–2013–0024 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0024 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–06290 Filed 3–18–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 13–375]

Open Internet Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of the Open Internet Advisory Committee (Committee). The Committee was established to track and evaluate the effects of the Commission's Open Internet rules, and to provide any recommendations it deems appropriate to the Commission regarding policies and practices related to preserving the open Internet. The Committee will observe market developments regarding the freedom and openness of the Internet and will focus in particular on issues addressed in the Commission's Open Internet rules, such as transparency, reasonable network management practices, differences in treatment of fixed and mobile broadband services, specialized services, and technical standards.

DATES: The next meeting of the Committee will take place on Tuesday, May 7, 2013, 9:30 a.m. CST, in Room 107 at the Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Wieboldt Hall, 340 E. Superior Street, Chicago, IL 60611.

FOR FURTHER INFORMATION CONTACT: Tejas Narechania, Office of General Counsel, (202) 418–1701, or email *Tejas.Narechania@fcc.gov;* or Deborah Broderson, Consumer and Governmental Affairs Bureau, (202) 418–0652, or email at *Deborah.Broderson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 13–375, released March 11, 2013, announcing the agenda, date and time of the Committee's next meeting.

At its May 7, 2013 meeting, it is expected that the Committee will consider issues related to the subject areas of its four working groups—Mobile Broadband, Economic Impacts of Open Internet Frameworks, Specialized Services, and Transparency—as well as other open Internet related issues. A limited amount of time at the end of the meeting will be available on the agenda for comments from the public. Alternatively, members of the public may send written comments to: Tejas Narechania, Designated Federal Officer of the Committee, or Deborah Broderson, Deputy Designated Federal Officer, at the address provided above.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill. The meeting of the Committee will also be broadcast live with open captioning over the Internet at *http://www.fcc.gov/live.*

Federal Communications Commission.

Kris Anne Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2013–06234 Filed 3–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before May 20, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Interagency Policy Statement on Funding and Liquidity Risk Management.

OMB Number: 3064–0174.

Form Number: None.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents:

Number of respondents: 4,510 total (11 large (over $20 billion in assets), 298 mid-size ($1–$20 billion), 4,201 small (less than $1 billion)).

Frequency of Response: Annual.

Estimated Annual Burden Hours per Response:

Burden under Section 14: 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

Burden under Section 20: 4 hours per month.

Total estimated annual burden: 552,560 hours.

General Description of Collection: The policy statement summarizes the principles of sound liquidity risk management that the agencies have issued in the past and, when appropriate, supplements them with the ''Principles for Sound Liquidity Risk Management and Supervision'' issued by the Basel Committee on Banking Supervision in September 2008. This policy statement emphasizes supervisory expectations for all depository institutions including banks, thrifts, and credit unions.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 14th day of March 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–06283 Filed 3–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking comment on renewal of two of its information collections: Interagency Charter and Federal Deposit Insurance Application (OMB No. 3064–0001) and CRA Sunshine (OMB No. 3064–0139). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before May 20, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NY–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Interagency Charter & Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Frequency of Response: Once.

Affected Public: Banks or savings associations wishing to become FDIC-insured depository institutions.

Estimated Number of Respondents: 217.

Estimated Time per Response: 125 hours.

Total Annual Burden: 27,125 hours.

General Description of Collection: The Federal Deposit Insurance Act requires proposed financial institutions to apply

to the FDIC to obtain deposit insurance. This collection provides the FDIC with the information needed to evaluate the applications.

2. *Title:* CRA Sunshine.

OMB Number: 3064–0139.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and their affiliates, and nongovernmental entities and persons.

Estimated Number of Respondents: 16.

Estimated Time per Response: 8.625 hours.

Total Annual Burden: 138 hours.

General Description of Collection: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community investment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of March, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–06271 Filed 3–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request Re National Survey of Unbanked and Underbanked Households

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden and as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), invites the general public and other Federal agencies to comment on the revised survey collection instrument for its third National Survey of Unbanked and Underbanked Households (''Household Survey''), currently approved under OMB Control No. 3064–0167, scheduled to be conducted in partnership with the U.S. Census Bureau as a supplement to its June 2013 Current Population Survey (''CPS''). The collection is a key component of the FDIC's efforts to comply with a Congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Reform Act'') (Pub. L. 109–173), which calls for the FDIC to conduct ongoing surveys ''on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system.'' Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including: (1) ''what cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts''; and (2) ''what is a fair estimate of the size and worth of the ''unbanked'' market in the United States.'' The Household Survey is designed to address these factors and provide a factual basis on the proportions of unbanked households. Such a factual basis is necessary to adequately assess banks' efforts to serve these households as required by the statutory mandate.

To satisfy the Congressional mandate, the FDIC designed two complementary surveys: a survey of FDIC-insured depository institutions and a survey of households. The survey of FDIC-insured depository institutions, aimed at collecting data on their efforts to serve underbanked, as well as unbanked, populations (underbanked populations include individuals who have an account with an insured depository but also rely on non-bank alternative financial service providers for transaction services or high cost credit products), was conducted in mid-2007 and again in 2011. The results of the 2007 survey were released in February 2008 and the results of the 2011 survey were released in December 2012. The first survey of unbanked and underbanked households was conducted in January 2009 as a CPS supplement and the results were released to the public in December 2009. The second survey of unbanked and underbanked households was conducted in June 2011 and the results were released to the public in September 2012. The Household Survey seeks to estimate the proportions of unbanked and underbanked households in the U.S. and to identify the factors that inhibit the participation of these households in the mainstream banking system. The results of these ongoing surveys will help policymakers and bankers understand the issues and challenges underserved households perceive when deciding how and where to conduct financial transactions. This notice addresses the next Household Survey.

DATES: Comments must be submitted on or before April 18, 2013.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to ''National Survey of Unbanked and Underbanked Households'':

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov*. Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Interested members of the public may obtain a copy of the survey and related instructions by clicking on the link for the *National Unbanked and Underbanked Household Survey* on the following Web page: *http://www.fdic.gov/regulations/laws/federal/notices.html*. Interested members of the public may also obtain additional information about the collection, including a paper copy of the proposed collection and related instructions, without charge, by contacting Leneta Gregorie at the address identified above, or by calling (202) 898–3719.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to revise the following collection of information:

Title: National Unbanked and Underbanked Household Survey.

OMB Number: 3064–0167.

Frequency of Response: Once.

Affected Public: U.S. Households.

Estimated Number of Respondents: 45,000.

Average Time per Response: 12 minutes (0.2 hours) per respondent.

Estimated Total Annual Burden: 0.2 hours × 45,000 respondents = 9,000 hours.

General Description of Collection

A mandate in section 7 of the Reform Act requires the FDIC to conduct ongoing surveys on efforts by banks to bring unbanked individuals and families into the conventional finance system. Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including the size of the unbanked market in the United States and the cultural, language and identification issues as well as transaction costs that appear to most prevent unbanked individuals from establishing conventional accounts. To obtain this information, the FDIC partnered with the U.S. Census Bureau, which administered the Household Survey supplement (''FDIC Supplement') to households that participated in the January 2009 and June 2011 CPS. The FDIC supplement has yielded significant data on the extent and demographic characteristics of the population that is unbanked or underbanked, the use by this population of alternative financial services, and the reasons why some households do not make greater use of traditional banking services. The Household Survey was the first survey of its kind to be conducted at the national level. An executive summary of the results of the first and second Household Surveys, the full reports, and the survey instruments can be accessed through the following link: *http://www.economicinclusion.gov/surveys/*.

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conduct of its third Household Survey as a supplement to the June 2013 CPS. However, prior to finalizing the next survey instrument, the FDIC sought public comment on whether changes to the existing instrument were desirable and, if so, to what extent. It should be noted that, as a supplement of the CPS survey, the Household Survey needs to adhere to specific parameters that include limits in the length and sensitivity of the questions that can be asked of CPS respondents. Specifically, there is a strict limitation on the number of questions permitted and the average time required to complete the survey (12 minutes on average).

Comment Discussion

On October 19, 2012 (77 FR 64337), the FDIC issued a request for comment on possible revisions to the 2013 Household Survey. The FDIC received five comments related to this survey effort. All commenters were supportive of efforts to bring unbanked and underbanked households into the financial mainstream.

One commenter suggested that the FDIC drill down further on the reasons for not using conventional/traditional financial institutions and suggested that income, judgments, liens, felony convictions, and ''choice'' (i.e., personal preference) are possible reasons for being unbanked. The FDIC continues to revise the survey instrument to better capture the full range of reasons why households do not have bank accounts. Answer options for this question have been clarified and streamlined. The 2013 survey adds an answer option that intends to capture households that feel that not having a bank account provides more privacy for personal finances. And, the 2013 survey asks households to select all applicable reasons for not having an account, but also indicate the most important reason, which will allow us to capture a more complete set of reasons.

Several comments related to the need to better understand households' use of prepaid cards, including the cards' cost structures, and the use of direct deposit in conjunction with prepaid cards. One commenter further suggested that the FDIC consider an alternative unbanked definition that excludes households that regularly use prepaid cards. The FDIC agrees that the use of prepaid cards is relatively high, and increasing, among unbanked and underbanked households. In response, the revised Household Survey asks a number of new questions about prepaid cards that seek to capture the timing of households' prepaid card use, the reasons for using these cards, where they are purchased, and how they are accessed and loaded.

One commenter mentioned the need to better understand households' financial decision-making, especially related to the choice between financial services or products such as: direct deposit vs. check-cashing, prepaid card vs. bank account. The FDIC agrees that this is an area of interest, but capturing this information would require more substantial revisions to survey than we are able to accommodate given the timeframe for the 2013 survey. This comment will be considered in future survey efforts.

Another suggestion referred to gaining further detail on the competitive advantages and disadvantages of financial service providers. The 2013 Household survey includes questions about what methods households use to access bank accounts, as well as locations used to access alternative financial services. This information should provide additional information regarding consumer preferences for accessing financial services.

One commenter requested that financial education questions be added to the survey. The FDIC recognizes the value of assessing financial education levels in conjunction with the use of financial services and products. However, financial education is difficult to measure at the household level. A good financial education assessment requires including a set of questions that test the respondents' financial capability, which might or might not be representative of that of the household.

Another commenter requested that the survey provide results for smaller demographic groups, and allow for more cross tabulations of data, and suggested having the Household Survey be a part of the American Community Survey (ACS) as opposed to the CPS. The FDIC recognizes the value of having questions regarding banking status administered as part of the ACS, as the ACS's large sample size would allow for analysis at smaller demographic and geographic levels. The FDIC may investigate proposing new ACS content through the content change process managed by OMB and the Census Bureau. However, the current data collection, as part of the CPS, does allow for many meaningful analyses of demographic groups. In many cases, individual users can use the public use dataset from the Census Bureau to perform a wide variety of demographic analyses, including some that may be more detailed than the FDIC published in its own reports on the Household Survey.

The FDIC also received a suggestion regarding the implementation of the survey. The commenter suggested that an in-person survey would facilitate data collection. The Household Survey is a supplement to the Census Bureau's Current Population Survey which is predominantly an in-person survey.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The FDIC will consider all comments to determine the extent to which the information collection should be modified prior to submission to OMB for review and approval. After the comment period closes, comments will be summarized and/or included in the FDIC's request to OMB for approval of the collection. All comments will become a matter of public record.

Dated at Washington, DC, this 14th day of March, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–06282 Filed 3–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC The Advisory Committee provides advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Wednesday, April 3, 2013, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION: *Agenda:* The agenda will include a discussion of current issues affecting community banks. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: March 14, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–06272 Filed 3–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. (Eastern Time), March 25, 2013.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the February 25, 2013 Board Member Meeting.
2. Thrift Savings Plan Activity Reports by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Report.
   c. Legislative Report.
3. Shareholder Actions.
4. Demographics Report.
5. Audit Reports and DOL Presentation.

Parts Closed to the Public

1. Security.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: March 15, 2013.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2013–06363 Filed 3–15–13; 11:15 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–19129–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before May 20, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–19129–60D for reference.

Information Collection Request Title: HIPAA Audit Review Survey.

Abstract: This information collection consists of an online survey of 115 covered entities (health plans, health care clearinghouses, and health care providers) that were audited in 2012 through the Office for Civil Rights

HIPAA Audit Program. The survey will gather information on the effect of the audits on the audited entities and the entities' opinions about the audit process.

Need and Proposed Use of the Information: The Office for Civil Rights is currently conducting a review of the HIPAA Audit program to determine its efficacy in assessing the HIPAA compliance efforts of covered entities. As part of that review, the online survey will be used to:

- Measure the effect of the HIPAA Audit program on covered entities;
- Gauge their attitudes towards the audit overall and in regards to major audit program features, such as the document request, communications received, the on-site visit, the audit-report findings and recommendations;
- Obtain estimates of costs incurred by covered entities, in time and money, spent responding to audit-related requests;
- Seek feedback on the effect of the HIPAA Audit program on the day-to-day business operations; and
- Assess whether improvements in HIPAA compliance were achieved as a result of the Audit program.

The information, opinions, and comments collected using the online survey will be used to produce recommendations for improving the HIPAA Audit program.

Likely Respondents: The 115 audit points-of-contact for each covered entity audited as part of the 2012 HIPAA Compliance Audit Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Covered Entity	115	1	2.0	230
Total	115	1	2.0	230

OS specifically requests comments on (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–06281 Filed 3–18–13; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition; Public Availability of the Department of Health and Human Services FY 2011 Service Contract Inventory; Correction

AGENCY: Department of Health and Human Services.

ACTION: Notice of correction.

SUMMARY: This document makes changes to the notice published in the February 28, 2013 **Federal Register** entitled ''Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition; Public Availability of the Department of Health and Human Services FY 2011 Service Contract Inventory.'' The following should be changed: The notice provided an incorrect URL address: *http://www.hhs.gov/grants/servicecontractsfy11.html.* The correct URL address is as follows: *http://www.hhs.gov/grants/servicecontracts/index.html.* The FY 2011 needs to be changed to FY 2012 in the TITLE, ACTION, and SUMMARY sections. This document makes these technical corrections.

FOR FURTHER INFORMATION CONTACT: Lori Sakalos, (202) 690–6361.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2013–04719 of February 28, 2013 (78 FR 13677), there were technical errors that are identified and corrected in the Correction of Errors section below.

II. Summary of Errors

In the ''SUMMARY'' section, after ''HHS has posted its inventory and a summary of the inventory on the HHS homepage at the following link:'' We are deleting the following URL address: *http://www.hhs.gov/grants/servicecontractsfy11.html.*

Change the fiscal year to FY 2012—In the ''TITLE'' section—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition; Public Availability of the Department of Health and Human Services FY 2011 Service Contract Inventory;

In the ''ACTION'' section—Notice Of Public Availability Of FY 2011 Service Contract Inventories;

In the ''SUMMARY'' section—In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Health and Human Services (HHS) is publishing this notice to advise the public of the availability of its FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011.

III. Correction of Errors

In FR Doc. 2013–04719 of February 28, 2013 (78 FR 13677), make the following corrections:

In the ''SUMMARY'' section, after ''HHS has posted its inventory and a summary of the inventory on the HHS homepage at the following link:'' The corrected URL should be: *http://*

www.hhs.gov/grants/servicecontracts/index.html.

In the corrected ''TITLE'' section it should read: Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition; Public Availability of the Department of Health and Human Services FY 2012 Service Contract Inventory,

In the corrected ''ACTION'' section it should read: Notice Of Public Availability Of FY 2012 Service Contract Inventories;

In the corrected ''SUMMARY'' section it should read: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Health and Human Services (HHS) is publishing this notice to advise the public of the availability of its FY 2012 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2012.

Dated: March 13, 2013.

Angela Billups,

Associate Deputy Assistant Secretary for Acquisition, Senior Procurement Executive, Assistant Secretary for Financial Resources Office of the Secretary.

[FR Doc. 2013–06218 Filed 3–18–13; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 14–15, 2013.

Closed: May 14, 2013, 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Open: May 14, 2013, 8:30 a.m. to 12:00 p.m.

Agenda: Committee discussion, individual presentations, and laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Closed: May 14, 2013, 12:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Open: May 14, 2013, 1:15 p.m. to 3:15 p.m.

Agenda: Committee discussion, individual presentations, and laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Closed: May 14, 2013, 3:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Closed: May 15, 2013, 8:00 a.m. to 9:40 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Open: May 15, 2013, 9:40 a.m. to 10:40 a.m.

Agenda: Committee discussion, individual presentations, and laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Closed: May 15, 2013, 10:40 a.m. to 10:50 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Open: May 15, 2013, 10:50 a.m. to 11:20 a.m.

Agenda: Committee discussion, individual presentations, and laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Closed: May 15, 2013, 11:20 a.m. to 12:35 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor, Conference Room 3C227, Baltimore, MD 21224.

Contact Person: Luigi Ferrucci, M.D., Ph.D., Scientific Review Branch, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 12, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06244 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel NIDDK Data Repository Contract Review (RFPNLM2013617).

Date: April 19, 2013.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch,

DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 13, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06248 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Resource-related Research Project (R24).

Date: April 12, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 13, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06240 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Development and Maintenance of an Aged Non-Human Primate Tissue Bank.

Date: April 8, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, MSC–9205, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Loan Repayment Program.

Date: May 3, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, MSC–9205, Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 12, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06245 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; 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: Office of Research Infrastructure Programs Special Emphasis Panel; Research Resource of Human Organs and Tissues.

Date: April 2, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Ctr. for Translational Sciences, Democracy 1, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Lambert, Scientific Review Officer, Office of Grants Management & Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1076, Bethesda, MD 20892, 301–435–0814, *lambert@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 13, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06249 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuronal Communication.

Date: April 5, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7850, Bethesda, MD 20892, 301–435–1220, *rc218u@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: A Proteomics Research Center for Integrative Biology.

Date: April 8–10, 2013.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Richland Columbia Point, 480 Columbia Point Drive, Richland, WA 99352.

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Casual Variants for Autoimmune and Musculoskeletal Diseases.

Date: April 8, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: April 9, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment and Regeneration.

Date: April 9–10, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA RM12–016: New Innovator Award.

Date: April 11, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: April 11, 2013.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 12, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06242 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Side Effects of Transfusion and Cellular Therapies.

Date: April 8, 2013.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael P Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 12, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06241 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Global Health: Innovative Training Programs.

Date: April 5, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Malgorzata Klosek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06246 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed 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: Center for Scientific Review Special Emphasis Panel PAR Panel: Research in Biomedicine and Agriculture Using Agriculturally Important Domestic Species.

Date: March 26, 2013.

Time: 9:00 a.m. to 3:00 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06247 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Tissue Culture Tumor Microenvironment.

Date: April 18–19, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Holiday Inn Express, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 12, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06243 Filed 3–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0077]

The Critical Infrastructure Partnership Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Quarterly Critical Infrastructure Partnership Advisory Council membership update.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the Critical Infrastructure Partnership Advisory Council (CIPAC) in a **Federal Register** Notice (71 FR 14930–14933) dated March 24, 2006, which identified the purpose of CIPAC, as well as its membership. This notice provides: (i) Quarterly CIPAC membership updates; (ii) instructions on how the public can obtain the CIPAC membership roster and other information on the council; and (iii) information on recently completed CIPAC meetings.

FOR FURTHER INFORMATION CONTACT: Larry May, Designated Federal Officer, Critical Infrastructure Partnership Advisory Council, Sector Outreach and Programs Division, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security,

245 Murray Lane, Mail Stop 0607, Arlington, VA 20598–0607; by telephone: (703) 603–5070; or via email at: *CIPAC@dhs.gov*. *Responsible DHS Official:* Larry May, Designated Federal Officer for the CIPAC.

SUPPLEMENTARY INFORMATION:

Purpose and Activity: The CIPAC facilitates interaction between government officials and representatives of the community of owners and/or operators for each of the critical infrastructure sectors defined by Presidential Policy Directive (PPD) 21 and identified in the National Infrastructure Protection Plan. The scope of activities covered by the CIPAC includes planning; coordinating among government and critical infrastructure owner and operator security partners; implementing security program initiatives; conducting operational activities related to critical infrastructure protection security measures, incident response, recovery, and infrastructure resilience; reconstituting critical infrastructure assets and systems for both manmade as well as naturally occurring events; and sharing threat, vulnerability, risk mitigation, and infrastructure continuity information.

Organizational Structure: CIPAC members are organized into 16 critical infrastructure sectors. Each of these sectors has a government coordinating council (GCC) whose membership includes (i) a lead Federal agency that is defined as the Sector-Specific Agency; (ii) all relevant Federal, state, local, tribal, and/or territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activates for that particular sector; and (iii) a sector coordinating council (SCC) whose membership includes critical infrastructure owners and/or operators or their representative trade associations.

CIPAC Membership: CIPAC Membership may include:

(i) Critical Infrastructure owner and/or operator members of their respective sector's DHS-recognized Sector Coordinating Council, including their representative trade or equivalent organizations as determined by the sector;

(ii) Federal, state, local, and tribal governmental entities comprising the members of the GCC for each sector, including their representative trade or equivalent organizations.

CIPAC membership is organizational. Multiple individuals may participate in CIPAC activities on behalf of a member as long as member representatives are not Federally registered lobbyists.

CIPAC Membership Roster and Council Information: The current roster of CIPAC members is published on the CIPAC Web site (*http://www.dhs.gov/cipac*) and is updated as the CIPAC membership changes. Members of the public may visit the CIPAC Web site at any time to view current CIPAC membership as well as the current and historic list of CIPAC meetings and agendas.

Dated: March 8, 2013.

Larry May,

Designated Federal Officer for the CIPAC.

[FR Doc. 2013–06298 Filed 3–18–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4101–DR; Docket ID FEMA–2013–0001]

Mississippi; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4101–DR), dated February 13, 2013, and related determinations.

DATES: *Effective Date:* March 1, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 13, 2013.

Jefferson Davis County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–06116 Filed 3–18–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–24]

Notice of Submission of Proposed Information Collection to OMB: Emergency Shelter Grants Program (FR 2562)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

This submission is to request a reinstatement without revisions of an expired information collection for the reporting burden associated with program and recordkeeping requirements that Emergency Solutions Grants (ESG) program recipients will be expected to implement and retain. This submission is limited to the record keeping burden under the ESG entitlement program, formerly titled, Emergency Shelter Grants Program and changed to match the new program name created through the HEARTH Act. To see the regulations for the new ESG program and applicable supplementary documents, visit HUD's Homeless Resource Exchange ESG page at *http://www.hudhre.info/esg/*. The statutory provisions and the implementing interim regulations (also found at 24 CFR 576) that govern the program require these recordkeeping requirements.

DATES: *Comments Due Date:* April 18, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0089) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Emergency Shelter Grants Program.

OMB Approval Number: 2506–0089.

Form Numbers: None.

Description of the need for the information and proposed use: This submission is to request a reinstatement without revisions of an expired information collection for the reporting burden associated with program and recordkeeping requirements that Emergency Solutions Grants (ESG) program recipients will be expected to implement and retain. This submission is limited to the record keeping burden under the ESG entitlement program, formerly titled, Emergency Shelter Grants Program and changed to match the new program name created through the HEARTH Act. To see the regulations for the new ESG program and applicable supplementary documents, visit HUD's Homeless Resource Exchange ESG page at *http://www.hudhre.info/esg/*. The statutory provisions and the implementing interim regulations (also found at 24 CFR 576) that govern the program require these recordkeeping requirements.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	2,000	1		183.72	367,441

Total Estimated Burden Hours: 367,441

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–06294 Filed 3–18–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX13LR000F60100]

Agency Information Collection Activities: Comment Request for the Mine, Development, and Mineral Exploration Supplement (1 Form)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028–0060).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for the extension of the currently approved paperwork requirements for the *Mine, Development, and Mineral Exploration Supplement.* This collection consists of one form and this notice provides the public and other Federal agencies an opportunity to comment on the nature of this collection which is scheduled to expire on March 31, 2013.

DATES: Please submit your comments on or before April 18, 2013.

ADDRESSES: To ensure that your written comments on this ICR are considered, please submit them directly to the OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email to *oira_submission@omb.eop.gov* or fax at 202–395–5806; and reference Information Collection 1028–0060 in the subject line. Please also submit a copy of your comments to Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 807, Reston, VA 20192 (mail); 703–648–7199 (fax); or *smbaloch@usgs.gov* (email). Reference Information Collection 1028–0060 in the subject line.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne at 703–648–7960 (telephone); *sosborne@usgs.gov* (email); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents will use this form to supply the USGS with domestic production, exploration, and mine development data for nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, academia, and the general public.

II. Data

OMB Control Number: 1028–0060.

Form Number: 9–4000–A.

Title: Mine, Development, and Mineral Exploration Supplement.

Type of Request: Extension of a currently approved collection.

Affected Public: Private sector: U.S. nonfuel minerals producers and exploration operations; Public sector: State and local governments.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 887.

Annual Burden Hours: 666 hours. We expect to receive 887 annual responses. We estimate an average of 45 minutes per response.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it

displays a currently valid OMB control number and current expiration date.

III. Request for Comments

On September 17, 2012, we published a **Federal Register** Notice (77 FR 57111) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on November 16, 2012. We did not receive any public comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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. Although you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: March 12, 2013.

John H. DeYoung, Jr.,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2013–06269 Filed 3–18–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[USGS–GX12WC00Com0001]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information Collection: USGS Ash Fall Report.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we (The U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: Submit written comments by April 18, 2013.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email to *OIRA_SUBMISSION@omb.eop.gov* or fax at 202–395–5806; and identify your submission with 1028–NEW USGS Ash Fall Report. Please also submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7199 (fax); or *smbaloch@usgs.gov* (email). Use Information Collection Number 1028–NEW, Ash Fall Report in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Peter Cervelli at 650–329–5188 or *pcervelli@usgs.gov.* You may also find information on this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: USGS Ash Fall Report

OMB Control Number: 1028–NEW

Abstract: The USGS provides warnings and notification to the public of volcanic activity in the U.S. in order to reduce the loss of life, property, and economic and societal impacts. USGS will use reports entered in real time by respondents of ash fall in their local area to correct or refine ash fall forecasts as the ash cloud moves downwind. Retrospectively these reports will enable USGS to improve their ash fall models and further research into eruptive processes.

This project will create a database module and web interface allowing the public and Alaska Volcano Observatory (AVO) staff to enter reports of ash fall in their local area in real time and retrospectively following an eruptive event. Users browsing the AVO Web site during eruptions will be directed towards a web form allowing them to fill in ash fall information and submit the information to AVO.

The ash fall report database will help AVO track eruption clouds and associated fallout downwind. These reports from the public will also give scientists a more complete record of the amount and duration and other conditions of ash fall. Getting first-hand accounts of ash fall will support model ash fall development and interpretation of satellite imagery. Knowing the locations from which ash-fall reports have been filed will improve ash fall warning messages, AVO Volcanic Activity Notifications, and make fieldwork more efficient. AVO staff will be able to condense and summarize the various ash fall reports and forward that information on to emergency management agencies and the wider public.

Frequency: On occasion, after each ash fall event during eruptions

Description of Respondents: Individuals affected by a volcanic ash fall events each year (if an eruption occurs).

Estimated Total Number of Annual Responses: 575

Estimated Annual Burden Hours: 78

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We estimate the non-hour cost burden to be $14.15 per respondent. Although not required, we estimate 50 respondents on an annual basis may voluntarily take and submit an ash fall sample. We suggest supplies on our Web site for respondents to use to assist them with their collection. Most respondents are likely to already possess the items so the true non-hour cost burden is likely to be lower.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: On June 11, 2012, we published a **Federal Register** Notice (77 FR 34400) announcing that we would submit this information collect to OMB for approval. The notice provided a 60-day public commenting period ending on August 20, 2012. We did not receive any comments in response to that notice. We again invite comments concerning this information collection on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this 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. Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: March 7, 2013.

Leslie Holland-Bartels,

USGS Regional Executive, Alaska Area.

[FR Doc. 2013–06268 Filed 3–18–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000. XP0000LXSS150A00006100.241A]

State of Arizona Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The RAC will meet on April 30 for the Recreation and Communities Working Group meeting from 1 to 5:00 p.m. and May 1 for the Business meeting from 8 a.m. to 4:30 p.m.

ADDRESSES: The meetings will be held at the BLM National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504. 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 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: A welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; updates on the Kaibab Vermilion Cliffs Heritage Alliance Archeological Program; Introduction to Partnership Initiative and the Sonoran Landscape Pilot—Recreational Target Shooting; report by the Recreation and Communities Working Group; Recreation RAC recommendations to the U.S. Forest Service Supervisor on the 9th Circuit Court Mount Lemmon Settlement Agreement; RAC questions on BLM District Managers' Reports; and other items of interest to the RAC. Members of the public are welcome to attend the Working Group and Business meetings. A public comment period is scheduled on the day of the Business meeting from 11 a.m. to 11:30 a.m. and again from 1:30 p.m. to 2 p.m. during the Recreation RAC Session for any interested members of the public who wish to address the Council on BLM or Forest Service recreation fee programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's or the Recreation Resource Advisory Council's (RRAC) consideration. Final meeting agendas will be available two weeks prior to the meetings and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html*. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting. Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the RRAC and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The RRAC will not review any recreation fee proposals at this meeting.

Deborah K. Rawhouser,

Associate State Director.

[FR Doc. 2013–06197 Filed 3–18–13; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–794]

Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers; Investigations: Terminations, Modifications and Rulings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the investigation until May 31, 2013. The Commission requests additional written submissions from the parties and from the public on the issues indicated in this notice.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2011, based on a complaint filed by Samsung Electronics Co., Ltd. of Seoul, Republic of Korea, and Samsung Telecommunications America, LLC of Richardson, Texas (collectively, ''Samsung''). 76 FR 45860 (Aug. 1, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, portable music and data processing devices, and tablet computers, by reason of infringement of various patents,

including U.S. Patent Nos. 7,706,348 (''the '348 patent''), 7,486,644 (''the '644 patent''), 7,450,114 (''the '114 patent''), and 6,771,980 (''the '980 patent''). The notice of investigation names Apple Inc. of Cupertino, California (''Apple''), as the only respondent.

On September 14, 2012, the presiding administrative law judge (''ALJ'') issued his final initial determination (''ID'') in this investigation finding no violation of section 337. The ALJ determined that the '348, '644, and '980 patents are valid but not infringed and that the '114 patent is both invalid and not infringed. The ALJ further determined that the economic prong of the domestic industry requirement is satisfied for all four patents at issue, but that the technical prong is not satisfied for any of the asserted patents.

On November 19, 2012, the Commission determined to review the ID in its entirety and issued a notice requesting written submissions from the parties and from the public on certain patent issues, on the assertion of FRAND-encumbered patents at the Commission, and on the issues of remedy, the public interest, and bonding. 77 FR 70464. The Commission received written submissions from the parties and from the public in response to the notice.

The Commission has determined to seek additional information on the potential effect on the public interest, as identified in 19 U.S.C. 1337(d)(1) and (f)(1), if the Commission were to order remedies against articles alleged by Samsung to infringe claims 75, 76, and 82–84 of the '348 patent. (A dissenting memorandum from Commissioner Aranoff can be found on EDIS under Inv. No. 337–TA–794.) Parties to the investigation, interested government agencies, the Office of Unfair Import Investigations, and any other interested persons are encouraged to file written submissions on the following issues, with reference to the applicable law, the existing evidentiary record, and if necessary, additional sworn testimony or expert declarations:

1. How would remedial orders barring the entry and further distribution of the Apple articles alleged to infringe the asserted claims of the '348 patent affect the public interest, as identified in 19 U.S.C. 1337(d)(1) and (f)(1)? The Commission is particularly interested in the effect on the public interest with respect to (a) the percentage of the total number of imported mobile telephone handsets that would be affected by such orders, (b) the percentage of the total number of imported cellular-network-enabled tablets that would be affected by such orders, and (c) the qualitative impact of exclusion of such handsets and tablets. The Commission is also interested in any other relevant market information bearing on the four statutory public interest factors. In addressing these issues, the Commission requests that submitters avoid discussing issues related to standards-setting organizations, as the record concerning those issues has been well developed.

2. What third, fourth, and later generation products (if any) are currently available in the U.S. market that are authorized by Samsung to utilize the technology covered by the asserted claims of the '348 patent? Are these products acceptable substitutes for the accused iPhones and iPads and are they widely viewed to be acceptable substitutes for the accused iPhones and iPads?

3. In what ways, if any, should a remedy with respect to infringement of the '348 patent be specifically tailored to avoid harm to the public interest, as identified in 19 U.S.C. 1337(d)(1) and (f)(1)? In addressing this issue, the Commission requests that submitters avoid discussing issues related to standards-setting organizations, as the record concerning those issues has been well developed.

In addition to the foregoing, the parties to the investigation are requested to brief their positions on the following issues, with reference to the applicable law, the existing evidentiary record, and if necessary, additional sworn testimony or expert declarations:

4. With respect to the '348 patent, Samsung's infringement case before the Commission relied upon accused third and fourth generation Apple products that operate on the AT&T wireless network. If the Commission were to issue remedial orders covering articles covered by the asserted claims of the '348 patent, would such an order cover (a) Apple products that operate on other wireless networks in the United States, and (b) later generation Apple products (*e.g.,* iPhone 5, later iPad versions)?

5. Please summarize the history to date of negotiations between Samsung and Apple concerning any potential license to the '348 patent, either alone or in conjunction with other patents. Please provide copies of all written offers and counteroffers concerning a license that would cover the '348 patent, whether made by Samsung or Apple.

6. Please summarize all licenses to the '348 patent granted by Samsung to any entity. Please provide copies of, or cite to their location in the record of this investigation, all agreements wherein Samsung grants any entity a license to the '348 patent.

7. Samsung and Apple are each requested to submit specific licensing terms for the '348 patent that each believes are fair, reasonable, and non-discriminatory. Would Samsung's terms change if the Commission were to enter remedial orders against Apple's products accused in this investigation? If so, please explain whether such an offer would be fair, reasonable, and non-discriminatory.

8. Which factors in *Georgia-Pacific Corp.* v. *United States Plywood Corp.,* 318 F. Supp. 1116 (S.D.N.Y. 1970) are most relevant to determining whether Samsung has offered to license the '348 patent to Apple on fair, reasonable, and non-discriminatory terms? Please apply any relevant *Georgia-Pacific* factors to Samsung's offer(s) to license the '348 patent to Apple. This analysis should include a comparison of Samsung's licensing offers to a hypothetical negotiation between the parties prior to adoption of the '348 patent into the standard at issue here. What other factors, if any, are relevant in determining whether Samsung has made a fair, reasonable, and non-discriminatory offer?

The Commission has invited briefing on only the discrete issues enumerated above. Other issues on review are adequately presented in existing filings.

Written Submissions: Written submissions in response to this notice must be filed no later than close of business on April 3, 2013. Initial submissions, not including any attachments, expert declarations, or exhibits, are limited to 50 pages for parties and 25 pages for non-parties. Reply submissions must be filed no later than the close of business on April 10, 2013. Reply submissions, not including any attachments, expert declarations, or exhibits, are limited to 35 pages for parties and 20 pages for non-parties. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–794'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing

should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: March 13, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–06252 Filed 3–18–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0270]

Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested: Bureau of Justice Assistance Application Form: Southwest Border Prosecution Initiative

ACTION: 30-Day notice.

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 78, Number 9, page 2692, on January 14, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment untilApril 18, 2013.

This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to M. Berry, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC, 20531 via email at *M.A.Berry@ojp.usdoj.gov* or by facsimile at (202) 305–1367.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information 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 function 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

(1) *Type of information collection:*

(2) *The title of the form/collection:* Bureau of Justice Assistance Application Form for the Southwest Border Prosecution Initiative.

(3) *The agency form number, if any and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal government.

Other: None.

Abstract: The Southwest Border Prosecutor Initiative was enacted in FY 2002 to reimburse state, county, parish, or municipal governments for the costs associated with the prosecution of criminal cases declined by local U.S. Attorneys. Each year, hundreds of criminal cases resulting from federal arrests are referred to local prosecutors to handle when the cases fall below certain monetary, quantity, or severity thresholds. This places additional burdens on local government resources that are already stretched by the demands of prosecuting violations of local and state laws. This program provides funds to eligible jurisdictions in the four Southwest Border States, using a uniform payment-per-case basis for qualifying federally initiated and declined-referred criminal cases that were disposed of after October 1, 2001. Up to 220 eligible jurisdictions may apply. This includes county governments and the four state governments in Arizona, California, New Mexico, and Texas.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 220 respondents will apply. Each application takes approximately 60 minutes to complete and is submitted 4 times per year (quarterly).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 880 hours (880 applications (220 × 4 times a year) × 60 minutes per application = 52,800/60 minutes per hour = 880 burden hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: March 14, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–06286 Filed 3–18–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[Docket No. OTJ 105]

Solicitation of Comments on Request for United States Assumption of Concurrent Federal Criminal Jurisdiction; Mille Lacs Band of Ojibwe

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: This notice solicits public comments on the Request for United States Assumption of Concurrent Federal Criminal Jurisdiction recently submitted to the Office of Tribal Justice,

Department of Justice by the Mille Lacs Band of Ojibwe pursuant to the provisions of 28 CFR 50.25.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before May 3, 2013. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Submit written comments via regular or express mail to Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530.
- *Fax:* Submit comments to the attention of Mr. Tracy Toulou, Office of Tribal Justice, Department of Justice, (202) 514–9078 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number). To ensure proper handling of comments, please reference ''Docket No. OTJ 105'' on all electronic and written correspondence. The Department encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION.**

Statutory Background

For more than two centuries, the Federal Government has recognized Indian tribes as domestic sovereigns that have unique government-to-government relationships with the United States. Congress has broad authority to legislate with respect to Indian tribes, however, and has exercised this authority to establish a complex jurisdictional scheme for the prosecution of crimes committed in Indian country. (The term ''Indian country'' is defined in 18 U.S.C. 1151.) Criminal jurisdiction in Indian country typically depends on several factors, including the nature of the crime; whether the alleged offender, the victim, or both are Indian; and whether a treaty, Federal statute, executive order, or judicial decision has conferred jurisdiction on a particular government.

The Tribal Law and Order Act (TLOA) was enacted on July 29, 2010, as Title II of Public Law 111–211. The purpose of the TLOA is to help the Federal Government and tribal governments better address the unique public-safety challenges that confront tribal communities. Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to State criminal jurisdiction under Public Law 280, Public Law 83–280, 67 Stat. 588 (1953) to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within that tribe's Indian country.

Department of Justice Regulation Implementing 18 U.S.C. 1162(d)

On December 6, 2011, 76 FR 76037 the Department published final regulations that established the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. 28 CFR 50.25. Among other provisions, the regulations provide that upon receipt of a tribal request the Office of Tribal Justice shall publish a notice in the **Federal Register** seeking comments from the general public.

Request by the Mille Lacs Band of Ojibwe

By a request dated February 22, 2013, the Mille Lacs Band of Ojibwe located in the State of Minnesota requested the United States to assume concurrent Federal jurisdiction to prosecute violations of 18 U.S.C. 1152 (the General Crimes, or Indian Country Crimes, Act) and 18 U.S.C. 1153 (the Major Crimes Act) within the Indian country of the tribe. This would allow the United States to assume concurrent criminal jurisdiction over offenses within the Indian country of the tribe without eliminating or affecting the State's existing criminal jurisdiction.

Solicitation of Comments

This notice solicits public comments on the above request.

Dated: March 13, 2013.

Tracy Toulou,

Director, Office of Tribal Justice.

[FR Doc. 2013–06280 Filed 3–18–13; 8:45 am]

BILLING CODE 4410–A5–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium

Notice is hereby given that, on February 19, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Warheads and Energetics Consortium (''NWEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. Specifically, AMTEC Corporation, Janesville, WI; Applied Research Associates, Albuquerque, NM; Capco, Inc., Grand Junction, CO; Design West Technologies, Inc., Tustin, CA; DHPC Technologies, Inc., Woodbridge, NJ; DSE, Inc., Tampa, FL; Excet, Inc., Springfield, VA; Materials Sciences Corporation, Horsham, PA; Systems and Materials Research Corporation, Austin, TX; and Targeted GeoSystems, LLC, Madison, AL, have been added as parties to this venture.

Also, Laserlith Corporation, Grand Forks, ND; RDM Engineering, LLC, East Brunswick, NJ; and Sabre Consulting and Training LLC, Wharton, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NWEC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NWEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on November 13, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 11, 2012 (77 FR 73676).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–06277 Filed 3–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on February 22, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, OBS Korea, Gunpo, Kyeonggi-Do, REPUBLIC OF KOREA; Smarteye Corporation, Rochester Hills, MI; OTO Ltd., Gyungju-Si, Gyeongbuk, REPUBLIC OF KOREA, have been added as parties to this venture.

Also, Precision Engine Controls Corporation, San Diego, CA; FlexLink, Göteborg, SWEDEN; Control Technology Incorporated, Knoxville, TN; SEARI Group Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Hitachi Cable Manchester, White Plains, NY; STS Co., Ltd., Gyeonggi-Do, REPUBLIC OF KOREA; ABOUNDI, Inc., Nashua, NH; MagneMotion Inc., Devens, MA; Control Concepts Inc., Chanhassen, MN; JSK Co., Ltd., Oska, JAPAN; and SensoPart Industriesensorik GmbH, Gottenheim, GERMANY, have withdrawn as parties to this venture.

In addition, BTR Netcom, has changed its name to METZ CONNECT USA Inc., Tinton Falls, NY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on November 23, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 19, 2012 (77 FR 75191).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–06275 Filed 3–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before April 18, 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–EBSA, 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: 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: Regulations 29 CFR 2510.3–38 provides that, in order to meet the definition of *investment manager* under Employee Retirement Income Security Act of 1974 section 3(38), a State-registered investment adviser must register electronically through a centralized electronic filing system established by the Securities and Exchange Commission or a State investment authority called the Investment Adviser Registration Depository.

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 1210–0125. The current approval is scheduled to expire on March 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 27, 2012 (77 FR 70828).

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 1210–0125. 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–EBSA.

Title of Collection: Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration.

OMB Control Number: 1210–0125.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 15.

Total Estimated Number of Responses: 15.

Total Estimated Annual Burden Hours: 18.

Total Estimated Annual Other Costs Burden: $1,040.

Dated: March 12, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–06261 Filed 3–18–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benefit Rights and Experience Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Benefit Rights and Experience Report,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before April 18, 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–ETA, 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: In order for an individual to be eligible for a State unemployment compensation program, the claimant must meet certain requirements that demonstrate attachment to the labor force. The vast majority of states use past wages for this purpose, however, a few States use actual weeks of work. Information relative to this first test of eligibility, known as monetary eligibility, is reported on Form ETA–218, Benefit Rights and Experience Report. The data in Form ETA–218 report includes counts on number of individuals who were and were not monetarily eligible, those eligible for the maximum benefits, the number of newly eligible claimants categorized by potential duration, and the number of persons who exhausted benefits categorized by their actual duration. Authority for collection of this information is under Social Security Act Section 303(a)(6). *See* 42 U.S.C. 503(a)(6).

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 1205–0177. The current approval is scheduled to expire on June 30, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 19, 2012 (77 FR 69503).

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 1205–0177. 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–ETA.

Title of Collection: Benefit Rights and Experience Report.

OMB Control Number: 1205–0177.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 636.

Total Estimated Annual Burden Hours: 318.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 11, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–06206 Filed 3–18–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for Training to Work—Adult Reentry

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY–12–06.

SUMMARY: The Employment and Training Administration (ETA) U.S. Department of Labor (DOL), announces the availability of approximately $20 million in grant funds authorized by the Workforce Investment Act and the Second Chance Act of 2007 to serve adult offenders enrolled in state and/or local work-release programs.

Under this solicitation, DOL expects to award 15 grants for up to $1,400,000 each to cover a 39-month period of performance, which includes a planning period of up to six months, program operation period of 24 months, and follow-up services of at least nine months provided to each participant. Any non-profit organization with Internal Revenue Service 501(c)(3) status may apply for these grants to provide services to eligible participants in areas of high-poverty and high-crime rates. These services will include case management; mentoring to support reintegration; education and/or training leading to industry-recognized credentials for in demand industries and occupations in the state or local area; integrated workforce activities to reduce recidivism; and follow-up services.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is May 2, 2013. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Brinda Ruggles, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3437.

Signed March 13, 2013 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2013–06285 Filed 3–18–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Lower Living Standard Income Level (LLSIL)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Title I of WIA (Pub. L. 105–220) requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth). WIA defines the term ''low income individual'' as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2013 and references the current 2013 Health and Human Services ''Poverty Guidelines.''

DATES: This notice is effective *March 19, 2013.*

FOR FURTHER INFORMATION OR QUESTIONS ON LLSIL: Please contact Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4526, Washington, DC 20210; Telephone: 202–693–2870; Fax: 202–693–3015 (these are not toll-free numbers); Email address: *wright.samuel.e@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via Text Telephone (TTY/TDD) by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

For Further Information or Questions on Federal Youth Employment Programs: Please contact Jennifer Kemp, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4464, Washington, DC 20210; Telephone: 202–693–3377; Fax: 202–693–3110 (these are not toll-free numbers); Email: *kemp.jennifer@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The purpose of WIA is to provide workforce investment activities through statewide and local workforce investment systems that increase the employment, retention, and earnings of participants. WIA programs are intended to increase the occupational skill attainment by participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation.

LLSIL is used for several purposes under the WIA. Specifically, WIA Section 101(25) defines the term ''low income individual'' for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for State formula allotments. The governor and State/local workforce investment boards (WIBs) use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages governors and State/local WIBs to consult the WIA regulations and the preamble to the WIA Final Rule (published at 65 FR 49294 August 11, 2000) for more specific guidance in applying LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the most current poverty-level guidelines in the **Federal Register** on January 24, 2013 (Volume 78, Number 16), pp. 5182–5183. The HHS 2013 Poverty guidelines may also be found on the Internet at *http://aspe.hhs.gov/poverty/13poverty.cfm.* ETA plans to have the 2013 LLSIL available on its Web site at *http://www.doleta.gov/llsil/2013/.*

WIA Section 101(24) defines LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA, which ETA then uses to develop the LLSIL tables, as provided in the Appendices to this **Federal Register** notice.

ETA published the 2012 updates to the LLSIL in the **Federal Register** of March 28, 2012, at Vol. 77, No. 60 pp. 18865–18869. This notice again updates the LLSIL to reflect cost of living increases for 2012, by calculating the percentage change in the most recent 2012 Consumer Price Index for All Urban Consumers (CPI–U) for an area to the 2011 CPI–U, and then applying this calculation to each of the March 28, 2012 LLSIL figures. The updated figures for a four-person family are listed in Appendix A, Table 1, by region for both metropolitan and non-metropolitan areas. Numbers in all of the Appendix tables are rounded up to the nearest dollar. Since program eligibility for low-income individuals, ''disadvantaged adults'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25), 127(b)(2)(C), and 132(b)(1)(B)(v)(IV), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions of the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

B. Midwest

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

C. South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Micronesia
Mississippi
North Carolina
Tennessee
Texas
Virginia
West Virginia

D. West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Appendix B, Table 2.

For Alaska, Hawaii, and Guam, the year 2012 figures were updated from the 2012 ''State Index'' based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual and semiannual CPI–U changes for a 12-month period ending in December 2012. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are reported in Appendix C, Table 3.

Appendix D, Table 4 lists each of the various figures at 70 percent of the updated 2012 LLSIL for family sizes of one to six persons. Because Tables 1–3 only list the LLSIL for a family of four, Table 4 can be used to separately determine the LLSIL for families of between one and six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is italicized. A modified Microsoft Excel version of Appendix D, Table 4, with the area names, will be available on the ETA LLSIL Web site at *http://www.doleta.gov/llsil/2013/.* Appendix E, Table 5, indicates 100 percent of LLSIL for family sizes of one to six, and is used to determine self-sufficiency as noted at 20 CFR 663.230 of the WIA regulations and WIA Section 134(d)(3)(A)(ii).

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State from Appendices A, B, and C, containing Tables 1 through 3. Appendices D and E, which contain Tables 4 and 5, which adjust a family of four figure for larger and smaller families, may be used with any LLSIL designated area. The governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the State or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures for Northeast metropolitan, Northeast non-metropolitan, portions of the State in the New York City MSA, and those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one LLSIL figure, the governor may determine which is to be used.

Under 20 CFR 661.110, a State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIA and WIA regulations.

III. Disclaimer on Statistical Uses

It should be noted that publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates

series has been terminated. The CPI–U adjustments used to update LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Appendix A

TABLE 1—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS) BY REGION [1]

Region [2]	2013 adjusted LLSIL	70 percent LLSIL
Northeast:		
Metro	$41,250	$28,875
Non-Metro [3]	39,404	27,583
Midwest:		
Metro	36,392	25,475
Non-Metro	35,183	24,628
South:		
Metro	35,131	24,592
Non-Metro	34,730	24,311
West:		
Metro	39,606	27,724
Non-Metro [4]	38,393	26,875

[1] For ease of use, these figures are rounded to the next highest dollar.

[2] Metropolitan area measures were calculated from the weighted average CPI–U's for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI–U's for city size class D.

[3] Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI–U for city size class D.

[4] Non-metropolitan area percent changes for the West region are based on unpublished BLS data.

Appendix B

TABLE 2—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS), FOR ALASKA, HAWAII AND GUAM [1]

Region	2013 adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro	$46,913	$32,839
Non-Metro [2]	48,173	33,721
Hawaii, Guam:		
Metro	50,941	35,658
Non-Metro [2]	51,428	36,000

[1] For ease of use, these figures are rounded to the next highest dollar.

[2] Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI–U's for all urban consumers for city size class D in the Western Region. Generally the non-metro areas LLSIL is lower than the LLSIL in metro areas. This year the non-metro area LLSIL incomes were larger because the change in CPI–U was smaller in the metro areas compared to the change in CPI–U in the non-metro areas of Alaska, Hawaii and Guam.

Appendix C

TABLE 3—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS) FOR 23 SELECTED MSAS [1]

Metropolitan statistical areas (MSAs)	2013 adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$48,086	$33,660
Atlanta, GA	33,008	23,106
Boston—Brockton—Nashua, MA/NH/ME/CT	44,231	30,962
Chicago—Gary—Kenosha, IL/IN/WI	37,641	26,349
Cincinnati—Hamilton, OH/KY/IN	35,610	24,927
Cleveland—Akron, OH	37,425	26,198
Dallas—Ft. Worth, TX	33,338	23,337
Denver—Boulder—Greeley, CO	37,286	26,100
Detroit—Ann Arbor—Flint, MI	34,960	24,472
Honolulu, HI	51,856	36,300
Houston—Galveston—Brazoria, TX	32,109	22,476
Kansas City, MO/KS	34,261	23,983
Los Angeles—Riverside—Orange County, CA	41,692	29,185
Milwaukee—Racine, WI	35,522	24,865
Minneapolis—St. Paul, MN/WI	35,608	24,926
New York—Northern NJ—Long Island, NY/NJ/CT/PA	43,731	30,612
Philadelphia—Wilmington—Atlantic City, PA/NJ/DE/MD	39,694	27,786
Pittsburgh, PA	43,489	30,443
St. Louis, MO/IL	33,741	23,619
San Diego, CA	45,363	31,754
San Francisco—Oakland—San Jose, CA	42,606	29,824
Seattle—Tacoma—Bremerton, WA	43,060	30,142
Washington—Baltimore, DC/MD/VA/WV [2]	44,522	31,165

[1] For ease of use, these figures are rounded to the next highest dollar.

[2] Baltimore and Washington are calculated as a single metropolitan statistical area.

Appendix D

Table 4: 70 Percent of Updated 2013 Lower Living Standard Income Level (LLSIL), by Family Size

To use the 70 percent LLSIL value, where it is stipulated for the WIA programs, begin by locating the region or metropolitan area where the program applicant resides. These are listed in Tables 1, 2 and 3. After locating the appropriate region or metropolitan statistical area, find the 70 percent LLSIL amount for that location. The 70 percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult Table 4 and the instructions below.

To use Table 4, locate the 70 percent LLSIL value that applies to the individual's region or metropolitan area

from Tables 1, 2 or 3. Find the same number in the ''family of four'' column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under the WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is italicized. Individuals from these size families may consult the 2013 HHS poverty guidelines found on the Health and Human Services Web site at *http://aspe.hhs.gov/poverty/13poverty.cfm* to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their States.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$8,098	*$13,267*	*$18,209*	*$22,476*	*$26,526*	*$31,021*
8,319	*13,635*	*18,723*	*23,106*	*27,268*	31,888
8,406	*13,775*	*18,908*	*23,337*	*27,544*	32,209
8,509	*13,941*	*19,135*	23,619	27,874	32,595
8,634	*14,153*	*19,432*	23,983	28,303	33,101
8,759	*14,349*	19,693	24,311	28,689	33,551
8,813	*14,439*	19,825	24,472	28,878	33,770
8,857	*14,513*	19,919	24,592	29,025	33,946
8,873	*14,534*	19,953	24,628	29,069	33,994
8,952	*14,673*	20,144	24,865	29,345	34,317
8,977	*14,710*	20,195	24,926	29,418	34,403
8,976	*14,713*	20,197	24,927	29,418	34,403
9,172	*15,034*	20,635	25,475	30,061	35,163
9,400	*15,404*	21,147	26,100	30,800	36,023
9,433	*15,464*	21,223	26,198	30,918	36,154
9,486	15,552	21,342	26,349	31,097	36,369
9,677	15,859	21,774	26,875	31,718	37,096
9,932	16,280	22,349	27,583	32,553	38,064
9,982	16,357	22,458	27,724	32,715	38,265
10,008	16,398	22,510	27,786	32,794	38,347
10,399	17,043	23,391	28,875	34,079	39,851
10,508	17,219	23,641	29,185	34,439	40,281
10,742	17,602	24,159	29,824	35,196	41,164
10,858	17,785	24,419	30,142	35,571	41,598
10,965	17,968	24,664	30,443	35,929	42,016
11,022	18,065	24,797	30,612	36,122	42,252
11,148	18,271	25,086	30,962	36,540	42,729
11,224	18,394	25,248	31,165	36,782	43,016
11,438	18,737	25,725	31,754	37,474	43,827
11,828	19,377	26,605	32,839	38,754	45,326
12,123	19,867	27,268	33,660	39,726	46,452
12,145	19,896	27,317	33,721	39,793	46,535
12,844	21,041	28,889	35,658	42,080	49,216
12,964	21,245	29,162	36,000	42,482	49,682
13,073	21,418	29,403	36,300	42,835	50,101

Appendix E

Table 5: Updated 2013 LLSIL (100 percent), by Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the State or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. Then locate the appropriate region or metropolitan statistical area and then find the 2013 adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four in the column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure that States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$11,569	$18,953	$26,013	$32,109	$37,894	$44,316
11,885	19,478	26,747	33,008	38,955	45,554
12,009	19,679	27,012	33,338	39,349	46,013
12,156	19,915	27,336	33,741	39,820	46,564
12,334	20,218	27,760	34,261	40,433	47,287
12,512	20,498	28,134	34,730	40,984	47,930
12,590	20,627	28,322	34,960	41,255	48,243
12,653	20,732	28,456	35,131	41,464	48,494
12,676	20,763	28,504	35,183	41,527	48,563
12,788	20,961	28,777	35,522	41,921	49,024
12,824	21,014	28,850	35,608	42,026	49,148
12,823	21,018	28,853	35,610	42,026	49,147
13,103	21,478	29,479	36,392	42,944	50,232

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
13,429	22,006	30,210	37,286	44,000	51,461
13,476	22,091	30,318	37,425	44,169	51,648
13,552	22,217	30,489	37,641	44,424	51,955
13,824	22,655	31,105	38,393	45,312	52,994
14,188	23,257	31,927	39,404	46,504	54,377
14,259	23,368	32,083	39,606	46,736	54,664
14,298	23,425	32,157	39,694	46,848	54,782
14,856	24,348	33,416	41,250	48,684	56,930
15,011	24,599	33,773	41,692	49,198	57,544
15,346	25,146	34,513	42,606	50,280	58,806
15,511	25,408	34,884	43,060	50,816	59,425
15,664	25,669	35,235	43,489	51,327	60,023
15,746	25,808	35,424	43,731	51,603	60,359
15,926	26,101	35,838	44,231	52,201	61,042
16,035	26,277	36,069	44,522	52,546	61,452
16,340	26,767	36,750	45,363	53,534	62,610
16,897	27,681	38,007	46,913	55,362	64,751
17,319	28,381	38,955	48,086	56,751	66,361
17,350	28,423	39,024	48,173	56,847	66,479
18,349	30,058	41,270	50,941	60,115	70,308
18,520	30,350	41,661	51,428	60,688	70,974
18,676	30,598	42,004	51,856	61,193	71,573

Signed at Washington, DC, this 11th day of March, 2013.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2013–06260 Filed 3–18–13; 8:45 am]

BILLING CODE 4510–FT–P

OFFICE OF MANAGEMENT AND BUDGET

Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments: Legislative Review Related to Enforcement Against Economic Espionage and Trade Secret Theft

AGENCY: Executive Office of the President, Office of Management and Budget, Office of the U.S. Intellectual Property Enforcement Coordinator.

ACTION: Request for written submissions from the public.

SUMMARY: The theft of trade secrets from U.S. corporations can impact national security, undermine U.S. global competitiveness, diminish U.S. export prospects, and put American jobs at risk. Trade secrets play a crucial role in maintaining America's global competitiveness. The Administration will continue to act vigorously to combat the theft of American trade secrets that could be used by foreign companies or foreign governments to gain an unfair commercial advantage over U.S. companies. We need to ensure that our laws are as effective as possible.

Therefore, the Administration is reviewing applicable Federal law related to enforcement against economic espionage and trade secret theft. This review is pursuant to the Administration Strategy on Mitigating the Theft of U.S. Trade Secrets issued on February 20, 2013. The strategy is available at: *http://www.whitehouse.gov/sites/default/files/omb/IPEC/admin_strategy_on_mitigating_the_theft_of_u.s._trade_secrets.pdf http://www.whitehouse.gov/sites/default/files/omb/IPEC/admin_strategy_on_mitigating_the_theft_of_u.s._trade_secrets.pdf.*

A related OMB blog post is available at: *http://www.whitehouse.gov/blog/2013/02/19/launch-administration-s-strategy-mitigate-theft-us-trade-secrets.*

And video of the rollout event is available at: *http://www.youtube.com/watch?v=vwgYahyQ754&feature=youtu.be.*

In the strategy, the U.S. Intellectual Property Enforcement Coordinator (IPEC) committed to a review of existing laws related to the enforcement of trade secrets to determine if legislative changes are needed to enhance enforcement. IPEC invites public input and participation in shaping the Administration's review. Specifically, we are requesting any recommendations for legislative changes that would enhance enforcement against, or reduce the risk of, the misappropriation of trade secrets for the benefit of foreign competitors or foreign governments.

DATES: Submissions must be received on or before April 22, 2013.

ADDRESSES: All comments should be submitted electronically via *http://www.regulations.gov,* docket number IPEC–2013–XXXX. Submissions should contain the term ''Trade Secret Theft Strategy Legislative Review''.

The regulations.gov Web site is a Federal E-Government Web site that allows the public to find, review and submit comments on documents that have published in the **Federal Register** and that are open for comment. Submissions filed via the regulations.gov Web site will be available to the public for review and inspection. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary business information without following the procedure laid out below.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' should be included in the ''Type comment and upload file'' field. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission indicating where confidential information has been redacted. The non-confidential

summary will be placed in the docket and open to public inspection.

If you are unable to provide submissions to regulations.gov, you may contact the U.S. Intellectual Property Enforcement Coordinator at *intellectualproperty@omb.eop.gov* using the subject line ''Trade Secret Theft Strategy Legislative Review'' or (202) 395–1808 to arrange for an alternate method of transmission.

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Intellectual Property Enforcement Coordinator, at *intellectualproperty@omb.eop.gov* or (202) 395–1808.

Victoria A. Espinel,

United States Intellectual Property Enforcement Coordinator, Executive Office of the President.

[FR Doc. 2013–06226 Filed 3–18–13; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: April 11, 2013, 8:30 a.m.–5:00 p.m., April 12, 2013, 8:30 a.m.–1:30 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for geosciences research and education.

Agenda

April 11, 2013

- Directorate and NSF activities and plans
- Division Subcommittee Meetings
- Meeting with the Acting Director

April 12, 2013

- Discussion of Expeditions in Education and other NSF Education Programs
- Briefing on South Pole Research and Operations
- Action Items/Planning for Fall Meeting

Dated: March 12, 2013.

Susanne Bolton,

Committee Management Officer.

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NUCLEAR REGULATORY COMMISSION

[NRC–2013–0049]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 21, 2013, to March 6, 2013. The last biweekly notice was published on March 4, 2013 (78 FR 14126).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0049. You may submit comments by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0049. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0049 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0049.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0049 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment

submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; 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. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital

identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866ndash;672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dairyland Power Cooperative, Docket Nos.: 50–409 and 72–046, La Crosse Boiling Water Reactor (LACBWR), La Crosse County, Wisconsin

Date of amendment request: December 10, 2012.

Description of amendment request: The proposed amendment would revise certain license conditions and to remove TS definitions, operational requirements, and specific design requirements that are no longer applicable with all spent fuel in dry cask storage at the Independent Spent Fuel Storage Installation (ISFSI). The proposed changes to the TS also remove administrative control requirements that have been relocated to the LACBWR Quality Assurance Program Description (QAPD) or are superseded by regulation or other guidance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes reflect the complete transfer of all spent nuclear fuel from the Fuel Element Storage Well (FESW) to the Independent Spent Fuel Storage Installation (ISFSI). Design basis SAFSTOR accidents related to the FESW were discussed in the LACBWR Decommissioning Plan. These postulated accidents were predicated on spent nuclear fuel being stored in the FESW. With the removal of the spent fuel from the FESW, there are no remaining important to safety systems required to be monitored and there are no remaining credible accidents that require that actions of a Certified Fuel Handler to prevent occurrence or mitigate the consequences.

The LACBWR Decommissioning Plan provided a discussion of radiological events postulated to occur during SAFSTOR with the bounding consequence resulting from a materials handling event. The proposed changes do not have an adverse impact on decommissioning activities or any postulated consequences.

The proposed change to the Design Features section of the Technical Specifications clarifies that the spent fuel is being stored in dry casks within an ISFSI. The probability or consequences of accidents at the ISFSI are evaluated in the dry cask vendor's FSAR and are independent of the SAFSTOR accidents that were evaluated in the LACBWR Decommissioning Plan.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes reflect the reduced operational risks as a result of the spent nuclear fuel being transferred to dry casks within an ISFSI. The proposed changes do not modify any physical systems, or components. The plant conditions for which the LACBWR Decommissioning Plan design basis accidents relating to spent fuel were evaluated are no longer applicable. The proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of an accident. Design basis accidents associated with the dry cask storage of spent fuel are already considered in the dry cask system's Final Safety Analysis Report. No new accident scenarios are created as a result of deleting non-applicable operational and administrative requirements.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

As described above, the proposed changes reflect the reduced operational risks as a result of the spent nuclear fuel being transferred to dry casks within an ISFSI. The design basis and accident assumptions within the LACBWR Decommissioning Plan and the Technical Specifications relating to spent fuel are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the SAFSTOR accident analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas Zaremba, Wheeler, Van Sickle and Anderson, Suite 801, 25 West Main Street, Madison, WI 53703–3398.

NRC Branch Chief: Bruce Watson.

Detroit Edison, Docket No. 50–016, Fermi 1, Monroe County, Michigan

Date of amendment request: December 21, 2012.

Description of amendment request: The proposed amendment (ML13002A037) would revise the Fermi 1 operating license to change its name on the license to ''DTE Electric Company.'' This name change is purely administrative in nature. Detroit Edison is a wholly owned subsidiary of DTE Energy Company, and this name change is part of a set of name changes of DTE Energy subsidiaries to conform their names to the ''DTE'' brand name. No other changes are contained within this request. This request does not involve a transfer of control over or of an interest in the license for Fermi 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment changes the name of the owner licensee. The proposed amendment is purely administrative in nature. The functions, powers, resources and management of the owner licensee will not change. Detroit Edison, which will be renamed DTE Electric Company, will remain the licensee of the facility. The proposed changes do not adversely affect accident initiators or precursors, and do not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is purely administrative in nature. The functions of the owner licensee will not change. These changes do not involve any physical alteration of the plant (i.e., no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment is a name change to reflect the new name of the owner licensee. The proposed amendment is purely administrative in nature. The functions of the owner licensee will not change. Detroit Edison, which will be renamed DTE Electric Company, will remain the licensee of the facility, and its functions will not change. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There are no changes to setpoints at which protective

actions are initiated, and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Council—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Bruce Watson.

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 11, 2013.

Description of amendment request: The proposed amendment would update the Fermi 2 Updated Final Safety Analysis Report (UFSAR) to describe methodology and results of the analysis performed to evaluate the protection of the plant's structures, systems and components (SSCs) from tornado generated missiles. The analysis is consistent with the guidance provided in Regulatory Issue Summary 2008–14, ''Use of TORMIS Computer Code for Assessment of Tornado Missile Protection.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Proposed for NRC review and approval are changes to the Fermi 2 Updated Final Safety Analysis Report (UFSAR) which in essence constitute a license amendment to incorporate use of an NRC approved methodology to assess the need for additional positive (physical) tornado missile protection of specific features at the Fermi 2 site. The UFSAR changes will reflect use of the Electric Power Research Institute (EPRI) Topical Report ''Tornado Missile Risk Evaluation Methodology'' (EPRI NP–2005), Volumes I and II. As noted in the NRC Safety Evaluation Report on this topic dated October 26, 1983, the current licensing criteria governing tornado missile protection are contained in Standard Review Plan (SRP) Sections 3.5.1.4 and 3.5.2. These criteria generally specify that safety-related systems be provided positive tornado missile protection (barriers) from the maximum credible tornado threat. However, SRP Section 3.5.1.4 includes acceptance criteria permitting relaxation of the above deterministic guidance, if it can be demonstrated that the probability of damage to unprotected essential safety-related features is sufficiently small.

As permitted in NRC Standard Review Plan (NUREG–0800) sections, the combined probability will be maintained below an allowable level, i.e., an acceptance criterion threshold, which reflects an extremely low probability of occurrence. The Fermi 2 approach assumes that if the sum of the individual probabilities calculated for tornado missiles striking and damaging portions of important systems or components is greater than or equal to 10 minus;6 per year per unit, then installation of unique missile barriers would be needed to lower the total cumulative probability below the acceptance criterion of 10^{-6} per year per unit.

With respect to the probability of occurrence or the consequences of an accident previously evaluated in the UFSAR, the possibility of a tornado reaching the Fermi 2 site and causing damage to plant structures, systems and components is a design basis event considered in the Updated Final Safety Analysis Report. The changes being proposed do not affect the probability that the natural phenomenon (a tornado) will reach the plant, but from a licensing basis perspective they do affect the probability that missiles generated by the winds of the tornado might strike and damage certain plant systems or components. There are a limited number of safety-related components that could theoretically be struck and consequently damaged by tornado-generated missiles. The probability of tornado-generated missile strikes on ''important'' systems and components (as discussed in Regulatory Guide 1.117, ''Tornado Design Classification'') is what is to be analyzed using the probability methods discussed above. The combined probability of damage will be maintained below an extremely low acceptance criterion to ensure overall plant safety. The proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident, due to the extremely low probability of damage due to tornado-generated missiles and thus an extremely low probability of a radiological release.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The possibility of a tornado reaching the Fermi 2 site is a design basis event that is explicitly considered in the UFSAR. This change involves recognition of the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change therefore deals with an established design basis event (the tornado). Therefore, the proposed change would not contribute to the possibility of a new or different kind of accident from those previously analyzed. The probability and consequences of such a design basis event are addressed in Question 1 above.

Based on the above discussions, the proposed change will not create the possibility of a new or different kind of accident than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The existing Fermi 2 licensing basis for protection of safety-related equipment required for safe shutdown from design basis tornado generated missiles is to provide positive missile barriers for all safety-related systems and components. With the change, it will be recognized that there is an extremely low probability, below an established acceptance limit, that a limited subset of the ''important'' systems and components could be struck and consequently damaged. The change from protecting all safety-related systems and components to ensuring an extremely low probability of occurrence of tornado-generated missile strikes and consequential damage on portions of important systems and components is not considered to constitute a significant decrease in the margin of safety due to that extremely low probability.

Therefore, the changes associated with this license amendment request do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Council—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Robert D. Carlson.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station (VYNPS), Vernon, Vermont

Date of amendment request: December 17, 2012.

Description of amendment request: The proposed amendment would revise VYNPS Technical Specification (TS) 3.3.B to provide an action statement for inoperable control rods consistent with the Standard Technical Specification (STS) provision (NUREG–1433, Revision 4).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not significantly increase the probability or consequences of an accident. The adding of an additional, restrictive action statement for inoperable equipment, consistent with the STS does not alter any accident analysis.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve any new modes of operation. The change establishes additional restrictive controls for equipment that is considered inoperable. The proposed amendment does not change how the control rod system is operated or change the design configuration of the control rods. No new accident precursors are introduced. No new or different types of equipment will be installed. The methods governing plant operation remain bounded by current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve any new methods of operation. The change establishes additional restrictive controls for equipment that is considered inoperable. The proposed amendment does not change how the control rod system is operated or change the design configuration of the control rods. No new or different types of equipment will be installed. The methods governing plant operation remain bounded by current safety analysis assumptions.

Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station (VYNPS), Vernon, Vermont

Date of amendment request: December 21, 2012.

Description of amendment request: The proposed amendment would revise the licensing basis relative to how the station satisfies the requirements in 10 CFR 50.63, ''Loss of all alternating current power.'' The VYNPS currently relies on the Vernon Hydroelectric Station (VHS) as the alternate alternating current (AAC) power source providing acceptable capability to withstand station blackout under 10 CFR 50.63(c)(2). The VYNPS proposes to replace the VHS with an onsite diesel generator as the AAC power source providing this capability which would involve changes to the facility and procedures described in the VYNPS Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not significantly increase the probability or consequences of an accident. The proposed amendment replaces one AAC power source (the VHS) with an additional onsite AAC power source (diesel generator). This equipment can not initiate a design basis accident and is not used to mitigate the consequences of design basis accidents. The equipment is used to mitigate the consequences of a station blackout as required by 10 CFR 50.63. Station blackout events are not considered design basis accidents and do not result in radiological consequences.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve any new modes of operation. The change provides an alternate means to provide AAC power to the station. The location of the SBO DG does not create the possibility of a different kind of accident. No new accident precursors are introduced. Station procedures will be revised to align the AAC source to provide the required power within established coping times. The methods governing plant operation remain bounded by current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The design of the new AAC source will accommodate the loading associated with the proceduralized station blackout response and safety margins will be maintained. The design of the system will meet regulatory guidance and be within station design analysis. The station safety analysis results are unchanged and margin to regulatory limits is not affected.

Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: December 14, 2012, as supplemented by letter dated January 31, 2013.

Description of amendment request: The proposed amendment would modify the pressure-temperature limit curves and low temperature overpressure protection limits in the Three Mile Island Nuclear Station, Unit 1 Technical Specification (TS) Section 3.1.2, ''Pressurization Heatup and Cooldown Limitations,'' TS Section 3.1.12, ''Pressurizer Power Operated Relief Valve, Block Valve, and Low-Temperature Overpressure Protection,'' and TS Section 4.5.2, ''Emergency Core Cooling System.'' The proposed changes reflect revised fluence projections out to 50.2 effective full-power years (EFPY) as compared to the current projections which go to 29 EFPY. The submittal, dated December 14, 2012, also includes a corresponding exemption request to use an alternate initial reference temperature for nil-ductility transition (RT_{NDT}) for Linde 80 weld materials per NRC-approved Topical Report BAW–2308, ''Initial RT_{NDT} of Linde 80 Weld Materials,'' Revisions 1–A and 2–A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment will revise the reactor coolant system heatup, cooldown, and inservice leak hydrostatic test limitations (Technical Specification (TS) Section 3.1.2 (''Pressurization Heatup and Cooldown Limitations'')) for the Reactor Coolant System (RCS) to a maximum of 50.2 Effective Full Power Years (EFPY) in accordance with 10 CFR Part 50, Appendix G. Further, the proposed amendment revises TMI, Unit 1 Technical Specification Sections 3.1.12 (''Pressurizer Power Operated Relief Valve (PORV), Block Valve, and Low Temperature Overpressure Protection (LTOP)''), and 4.5.2 (''Emergency Core Cooling System'') for Low Temperature Overpressure Protection (LTOP) requirements to reflect the revised P–T limits of the reactor vessel. P–T limits for the TMI, Unit 1 reactor vessel were developed in accordance with the requirements of 10 CFR Part 50, Appendix G (''Fracture Toughness Requirements''), utilizing the analytical methods and flaw acceptance criteria of Topical Report BAW–10046A (AREVA NP Document BAW–10046A, Rev. 2, ''Methods of Compliance with Fracture Toughness and Operational Requirements of 10 CFR Part 50, Appendix G,'' by H. W. Behnke et al., June 1986) and ASME Code Section XI, Appendix G (''Fracture Toughness Criteria for Protection Against Failure,'' 1995 Edition with Addenda through 1996) which are previously approved NRC standards for the preparation of P–T limit curves. Updating the P–T limit curves for additional EFPY maintains the level of assurance that Reactor Coolant Pressure Boundary integrity will be maintained, as specified in 10 CFR Part 50, Appendix G. Additionally, this proposed amendment deletes administrative requirements contained in TS 3.1.2.4 and 3.1.2.5 which provide reporting requirements related to the preparation and submittal of P–T curves that are outdated or contained in regulation.

The proposed changes do not adversely affect accident initiators or precursors, and do not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes incorporate methodologies that either have been approved or accepted for use by the NRC (provided that any conditions/limitations are satisfied). The P–T limit curves and LTOP limits will provide the same level of protection to the Reactor Coolant Pressure Boundary as was previously evaluated. Reactor Coolant Pressure Boundary integrity will continue to be maintained in accordance with 10 CFR Part 50, Appendix G, and the assumed accident performance of plant structures, systems and components will not be affected. Additionally, this proposed amendment deletes administrative requirements contained in TS 3.1.2.4 and 3.1.2.5. These changes do not involve any physical alteration of the plant (i.e., no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the function of the Reactor Coolant Pressure Boundary or its response during plant transients. By calculating the P–T limits and associated LTOP limits using NRC-approved methodology, adequate margins of safety relating to Reactor Coolant Pressure Boundary integrity are maintained. Additionally, this proposed amendment deletes administrative requirements contained in TS 3.1.2.4 and 3.1.2.5. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. These changes will ensure that protective actions are initiated and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Meena Khanna.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: February 4, 2013.

Description of amendment request: The proposed amendment would delete various reporting requirements contained in the Technical Specifications (TSs). Specifically, the proposed amendment will delete the Sealed Source Contamination Special Report and the Startup Report, as well as the plant-specific annual reports regarding periodic Leak Reduction Program tests, Pressurizer Power Operated Relief Valve and Pressurizer Safety Valve challenges, specific activity analysis in which the primary coolant exceeds the limits of TS 3.1.4.1, and major changes to radioactive waste treatment systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not involve the modification of any plant equipment or affect plant operation. The proposed changes will have no impact on any safety related structures, systems, or components. The reporting requirements proposed for deletion are not required because the requirements are adequately addressed by other regulatory requirements, or are no longer warranted.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on the design, function or operation of any plant structure, system or component. The proposed changes do not affect plant equipment or accident analyses. The reporting requirements proposed for deletion are not required because the requirements are adequately addressed by other regulatory requirements, or are no longer warranted.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Margins of safety are unaffected by deletion of the reporting requirements.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Meena Khanna.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1 (DBNPS), Ottawa County, Ohio

Date of amendment request: January 18, 2013.

Description of amendment request: The amendment would revise DBNPS Technical Specification (TS) 3.4.17, ''Steam Generator (SG) Tube Integrity''; TS 3.7.18, ''Steam Generator Level''; TS 5.5.8, ''Steam Generator (SG) Program''; and TS 5.6.6, ''Steam Generator Tube Inspection Report.'' The proposed revision to these TSs is to support plant operations following the replacement of the original SGs which is scheduled to be completed in April 2014. The proposed changes to TS 3.4.17, TS 5.5.8, and TS 5.6.6 would impose requirements that reflect the analysis and tube materials of the replacement SGs. These changes are consistent with Technical Specifications Task Force (TSTF) traveler TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' which was approved by the U.S. Nuclear Regulatory Commission on October 27, 2011. The proposed revision to TS 5.5.8 also includes minor editorial changes and eliminates the requirements for special visual inspections of the internal auxiliary feedwater header, since this component will not be part of the replacement SGs.

The proposed changes to TS 3.7.18 would impose inventory limits on the secondary-side that reflect the design characteristics and dimensions of the replacement SGs. The revised limits will ensure that plant operations with the replacement SGs is bounded by the values used in the existing main steam line break analysis presented in the DBNPS updated safety analysis report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

For TS 3.4.17, ''Steam Generator (SG) Tube Integrity,'' a steam generator tube rupture (SGTR) event is the relevant design basis accident analyzed in the licensing basis for DBNPS. TS 3.4.17 and TS 5.5.8, ''Steam Generator (SG) Program,'' impose monitoring and inspection requirements that ensure tube integrity is maintained. The proposed changes to these TSs would implement monitoring and inspection requirements appropriate for the design and materials of the replacement SGs. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that that the integrity of the SG tubes is verified to be maintained at a level that prevents an increase in the probability of a SGTR.

Therefore the proposed changes to these TSs will not increase the probability of a SGTR.

The radiological consequences of a SGTR are bounded by using conservative assumptions in the design basis accident analysis, and are dependent upon the pre-existing primary-to-secondary leak rate, the flow rate through the ruptured tube, the radiological isotopic content of the RCS [reactor coolant system] and the release paths. The monitoring and inspection requirements imposed by TS 3.4.17 and TS 5.5.8 are intended to ensure that SG tube integrity is maintained. The proposed changes to these TSs would implement monitoring and inspection requirements appropriate for the design and materials of the replacement SGs and would not affect radiological releases in the event of an SGTR. The radiological isotopic content of the RCS and the release paths are not affected by any of the requirements in the current TS 3.4.17 or TS 5.5.8 or proposed revisions thereto. Therefore, the proposed changes to these TSs will not increase the consequences of a SGTR.

TS 5.6.6, ''Steam Generator Tube Inspection Report,'' specifies information that is to be reported to the NRC following SG inspections performed in accordance with the Steam Generator Program requirements contained in TS 5.5.8. The requirement to provide this report is administrative in nature and the content of this report can have no effect on the probability or the consequences of an accident previously evaluated.

LCO [limiting condition for operation] 3.7.18, ''Steam Generator Level'' ensures that the plant is operated within the SG inventory limits that were used as initial conditions in the current accident analysis for a Main Steam Line Break (MSLB). The SG inventory is not an accident initiator and does not affect any accident initiator. Therefore, the proposed changes in SG inventory limits will not increase the probability of a MSLB accident.

The radiological consequences of a MSLB are dependent upon the total SG inventory released, the SG primary-to-secondary leakage rate, the radiological isotopic content of the RCS, and the release paths. The revision to LCO 3.7.18 will ensure that the total inventory released remains bounded by the existing analysis. None of the other factors listed above are affected by the revised operating limits on SG inventory that are proposed in the revisions to LCO 3.7.18.

Therefore, the proposed changes in SG inventory limits will not increase the consequences of a MSLB.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes support replacement of the SGs at the DBNPS. Replacement of the SGs is being performed as a design modification in accordance with the provisions of 10 CFR 50.59, ''Changes, tests and experiments.'' The proposed changes to TS 3.4.17, TS 5.5.8 and TS 5.6.6 would implement monitoring and inspection requirements appropriate for the design and materials of the replacement SGs, and establish appropriate reporting requirements. These changes would not affect the method of operation of the SGs. The proposed changes to TS 3.7.18 would ensure that the replacement SGs will be operated in accordance with existing analyses. None of the proposed changes would introduce any changes to the plant design. In addition, the proposed changes would not impact any other plant system or component.

The proposed changes would continue to prevent loss of SG tube integrity, and would ensure operation within the bounds of existing accident analyses. There are no accident initiators created or affected by these changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant system (RCS) pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the RCS pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes and the ability to remove residual heat from the primary system.

The proposed changes will ensure that the existing margins of safety are maintained following the replacement of SGs. The changes to LCO 3.4.17 and TSs 5.5.8 and 5.6.6 impose requirements for SG tube integrity monitoring, inspection, and reporting that will ensure that there is no reduction in the ability of the tubes to perform their RCS pressure boundary and heat transfer functions. The changes to LCO 3.7.18 ensure the MSLB accident analyses remain bounding.

Therefore, the proposed changes do not involve a significant reduction· in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Corporation, 76 South Main Street, Akron, Ohio 44308.

NRC Branch Chief: Jeremy S. Bowen.

Florida Power and Light Company, Docket Nos. 50–335 and 50–389, St. Lucie Plant, Units 1 and 2, St. Lucie County, Florida

Date of amendment request: December 27, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to align St. Lucie TSs with Combustion Engineering Owners Group TSs language describing required licensed Senior Reactor Operator (SRO) duties during fuel handling activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will not result in any significant increase in the probability or consequences of an accident previously evaluated, as the proposed TS changes are consistent with Standard Technical Specifications. Further, not requiring licensed SRO oversight of fuel handling operations other than core alterations does not introduce additional risk or a greater potential for consequences of an accident that has not previously been evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature and do not involve a physical modification of the plant. No new or different type of equipment will be installed. The methods for conducting core alterations and other fuel handling operations will remain the same. The proposed changes will not introduce new failure modes/effects that could lead to an accident for which consequences exceed that of accidents previously analyzed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not involve a significant reduction in a margin of safety in that the changes are administrative in nature. No plant equipment or accident analyses will be affected. Additionally, the proposed changes will not relax any criteria used to establish safety limits, safety system settings, or the bases for any limiting conditions for operation. Safety analysis acceptance criteria are not affected. Plant operation will continue within the design basis. The proposed changes do not adversely affect systems that respond to safely shutdown the plant and maintain the plant in a safe shutdown condition. Consequently, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review; it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James Petro, Managing Attorney—Nuclear, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Jessie F. Quichocho.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 6, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to eliminate the requirements that the average power range monitoring (APRM) system ''Upscale'' and ''Inoperative'' scram and control rod withdrawal block functions be operable in Operational Condition (OPCON) 5, refueling operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with the NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The APRM system is not an initiator of or a precursor to any accident or transient. The APRM system monitors the neutron flux level in the power operating range from approximately one percent to greater than rated thermal power and initiates automatic protective actions for postulated at-power reactivity insertion events. Thus, the proposed changes to the TS operability requirements for the APRM system will not impact the probability of any previously evaluated accident.

The design of plant equipment is not being modified by the proposed amendment. The TSs will continue to require operability of the APRM system ''Upscale'' and ''Inoperative'' scram and control rod withdrawal block functions when the reactor is in the Startup and Run modes (OPCON 2 and OPCON 1) to provide core protection for postulated reactivity insertion events occurring during power operating conditions. Thus, the consequences of previously evaluated at-power reactivity insertion events are not affected by the proposed amendment.

The proposed elimination of the TS requirements that the APRM system ''Upscale'' and ''Inoperative'' scram and control rod withdrawal block functions be operable when the reactor is in the Refueling mode (OPCON 5) also does not increase the consequences of an accident previously evaluated. The possibility of inadvertent criticality due to a control rod withdrawal error during refueling is minimized by design features and procedural controls that are not affected by the proposed amendment. Since the core is designed to meet shutdown requirements with the highest worth rod withdrawn, the core remains subcritical even with one rod withdrawn. Any attempt to withdraw a second rod results in a rod block by the Refueling Interlocks (RI). In addition, since reactor neutron flux levels during refueling are below the APRM indicating range, the APRM system does not provide any meaningful core monitoring or protection in the refueling operating condition (OPCON 5). The source range (SRM) and intermediate range (IRM) neutron monitoring systems provide adequate neutron flux monitoring during refueling and automatically initiate protective actions (scram or control rod withdrawal block) when required during refueling.

Additionally, if the infrequently performed TS 3/4.10.3, ''Shutdown Margin Demonstrations,'' is performed in OPCON 5, the additional controls and restrictions in place during this test are sufficiently robust even without the RIs when the mode switch is temporarily placed in Startup. In addition to the OPCON 5 SRM and IRM protective actions, the SRM RPS [reactor protection system] trip is made operable, the RWM [rod worth minimizer] is operable and programmed for the shutdown margin demonstration, use of the ''rod-out-notch-override'' control is prohibited, and no other core alterations are allowed. Therefore, during this infrequent operation, operability of the APRMs is not required as they would not provide any meaningful core monitoring or protection.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the TS operability requirements for the APRM system do not introduce any new accident precursors and do not involve any physical plant alterations or changes in the methods governing normal

plant operation that could initiate a new or different kind of accident. The proposed amendment does not alter the intended function of the APRM system and does not affect the ability of the system to provide core protection for at-power reactivity insertion events. The other existing TS-required neutron monitoring systems (SRM and IRM) provide for core monitoring and protection in the refueling mode (OPCON 5). Additionally, if the infrequently performed TS 3/4.10.3, ''Shutdown Margin Demonstrations'' is performed in OPCON 5, the additional controls and restrictions in place during this test are sufficiently robust even without the RIs when the mode switch is temporarily placed in ''Startup.''

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the ability of the fission product barriers (fuel cladding, reactor coolant system, and primary containment) to perform their design functions during and following postulated accidents. The proposed amendment does not alter setpoints or limits established or assumed by the accident analyses. The proposed TS changes to eliminate the requirements that the APRM system ''Upscale'' and ''Inoperative'' scram and control rod withdrawal block functions be operable when in OPCON 5 have no impact on the performance of the fission product barriers. These APRM functions do not provide any meaningful core monitoring or protection in the Refueling operating condition, including the infrequently performed special test TS 3/4.10.3. The other existing TS required neutron monitoring systems (SRM and IRM) provide for core monitoring and protection in the refueling mode (OPCON 5). In the Startup and Run modes the TSs will continue to require operability of these APRM functions to provide core protection for postulated reactivity insertion events occurring during power operating conditions, consistent with the plant safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above in square brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Meena K. Khanna.

Southern Nuclear Operating Company Docket Nos.: 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: February 15, 2013.

Description of amendment request: The proposed change would amend Combined Licenses Nos.: NPF–91 and NPF–92 for Vogtle Electric Generating Plant (VEGP) Units 3 and 4 by departing from the plant-specific design control document Tier 2* material by revising reference document APP–OCS–GEH–320, ''AP1000 Human Factors Engineering Integrated System Validation Plan'' from Revision D to Revision 2. APP–OCS–GEH–320 is incorporated by reference in the updated final safety analysis report (UFSAR) as a means to implement the activities associated with the human factors engineering verification and validation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Integrated System Validation (ISV) provides a comprehensive human performance-based assessment of the design of the AP1000 Human-System Interface (HSI) resources, based on their realistic operation within a simulator-driven Main Control Room (MCR). The ISV is part of the overall AP1000 Human Factors Engineering (HFE) program. The changes are to the ISV Plan to clarify the scope and amend the details of the methodology. The ISV Plan is needed to perform, in the simulator, the scenarios described in the document. The functions and tasks allocated to plant personnel can still be accomplished after the proposed changes. The performance of the tests governed by the ISV Plan provides additional assurances that the operators can appropriately respond to plant transients. The ISV Plan does not affect the plant itself. Changing the ISV Plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. No safety-related structure, system, component (SSC) or function is adversely affected. The changes do not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to the ISV Plan affect the testing and validation of the Main Control Room and Human System Interface using a plant simulator.

Therefore, the changes do not affect the safety-related equipment itself, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification will be adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment.

Therefore, this activity does not create the possibility of a new or different kind of accident than any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to the ISV Plan affect the testing and validation of the Main Control Room and Human System Interface using a plant simulator. Therefore, the changes do not affect the assessments or the plant itself. These changes do not affect safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Blach & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Lawrence Burkhart.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: November 19, 2012.

Description of amendment request: The proposed amendment would

change the Technical Specification (TS) 3.7.10 to require a unit shutdown within the TS 3.7.10 Actions instead of entering Limiting Condition for Operation (LCO) 3.0.3 when both Control Room Emergency Ventilation System (CREVS) trains are inoperable in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning and the Completion Time of 8 hours for restoration of at least one CREVS train to OPERABLE status is not met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed changes modify WBN Unit 1 TS 3.7.10 to resolve a potential conflict in applying the appropriate actions for not meeting the Required Action and associated Completion Time of Condition E. These proposed changes are acceptable in the event that both CREVS trains are inoperable in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning and the Completion Time of 8 hours for restoration of at least one CREVS train to OPERABLE status is not met because the requirements to shutdown the unit to Mode 3 and Mode 5 are similar to the current requirements, the required Completion Times are 1 hour less than the existing LCO 3.0.3 Completion Times that currently apply, and do not impact the design and operation of the CREVS, or the ultimate Actions required to be taken by TS 3.7.10 upon inoperability of the CREVS in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning. The proposed changes do not (1) require physical changes to plant systems, structures, or components; (2) prevent the safety function of any safety-related system, structure, or component during a design basis event; (3) alter, degrade, or prevent action described or assumed in any accident described in the WBN Unit 1 UFSAR from being performed since the safety-related systems, structures, or components are not modified; (4) alter any assumptions previously made in evaluating radiological consequences; or (5) affect the integrity of any fission product barrier.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes modify WBN Unit 1 TS 3.7.10 to resolve a potential conflict in applying the appropriate, actions for not meeting the Required Action and associated Completion Time of Condition E. These proposed changes are acceptable in the event that both CREVS trains are inoperable in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning and the Completion Time of 8 hours for restoration of at least one CREVS train to OPERABLE status is not met because the requirements to shutdown the unit to Mode 3 and Mode 5 are similar to the current requirements, the required Completion Times are 1 hour less than the existing LCO 3.0.3 Completion Times that currently apply, and do not impact the design and operation of the CREVS, or the ultimate Actions required to be taken by TS 3.7.10 upon inoperability of the CREVS in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning. The proposed changes do not introduce any new accident causal mechanisms, since no physical changes are being made to the plant, nor do they impact any plant systems that are potential accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes modify WBN Unit 1 TS 3.7.10 to resolve a potential conflict in applying the appropriate actions for not meeting the Required Action and associated Completion Time of Condition E. These proposed changes are acceptable in the event that both CREVS trains are inoperable in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning and the Completion Time of 8 hours for restoration of at least one CREVS train to OPERABLE status is not met because the requirements to shutdown the unit to Mode 3 and Mode 5 are similar to the current requirements, the required Completion Times are 1 hour less than the existing LCO 3.0.3 Completion Times that currently apply, and do not impact the design and operation of the CREVS, or the ultimate Actions required to be taken by TS 3.7.10 upon inoperability of the CREVS in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning. As such, there is no impact on the safety analysis for the CREVS. The proposed changes do not alter the permanent plant design, including instrument set points, that is the basis of the assumptions contained in the safety analyses.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Jessie F. Quichocho.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 6, 2012, as supplemented by letters dated August 29, 2012, September 21, 2012, November 29, 2012, and January 22, 2013.

Brief Description of amendments: The amendments revise Technical Specification (TS) 5.6.5.b by replacing AREVA Topical Report ANF–524(P)(A), *ANF Critical Power Methodology for Boiling Water Reactors* with AREVA Topical Report ANP-I 0307PA, Revision 0, *AREVA MCPR Safety Limit Methodology for Boiling Water Reactors,* June 2011, in the list of analytical methods that have been reviewed and approved by the U.S. Nuclear Regulatory Commission for determining core operating limits, (2) revise TS 2.1.1, ''Reactor Core SLs [Safety Limits],'' by incorporating revised Safety Limit Minimum Critical Power Ratio (SLMCPR) values, and (3) revise the license condition in Appendix B, ''Additional Conditions,'' of the operating licenses regarding an alternate method for evaluating SLMCPR values.

Date of issuance: March 1, 2013.

Effective date: Date of issuance, to be implemented prior to the startup from the 2014 Unit 1 refueling outage for Unit 1 changes, and prior to the startup from the 2013 Unit 2 refueling outage for Unit 2 changes.

Amendment Nos.: Unit 1—262 and Unit 2—290.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: July 3, 2012 (77 FR 39524). The supplements dated August 29, 2012, September 21, 2012, November 29, 2012, and January 22, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 2013.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, et al., Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of application for amendment: August 6, 2012.

Brief Description of amendment: The amendment allows a delay time for entering a supported system Technical Specification (TS) when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.8 is added to the TS to provide this allowance and define the requirements and limitations for its use.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–372, Revision 4. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible amendments concerning TSTF–372, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252).

Date of issuance: February 26, 2013.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No.: 232.

Renewed Facility Operating License No. DPR–23: Amendment changed the license and TSs.

Date of initial notice in ***Federal Register:*** October 16, 2012 (77 FR 63347).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2013.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit 2, New London County, Connecticut

Date of amendment request: April 13, 2012.

Description of amendment request: The proposed amendment would revise the Millstone Power Station, Unit 2 (MPS2) Technical Specification (TS) requirements related to diesel fuel oil testing consistent with NUREG–1432, Rev. 3.1, ''Standard Technical Specifications, Combustion Engineering Plants,'' December 1, 1995, and NRC approved Technical Specification Task Force (TSTF) TSTF–374, ''Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil,'' Revision 0.

Date of issuance: March 5, 2013.

Effective date: As of the date of issuance, and shall be implemented within 120 days. *Amendment No.:* 313.

Renewed Facility Operating License No. DPR–65: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2012 (77 FR 35072). The supplemental letter dated May 7, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2013.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit 3, Westchester County, New York

Date of application for amendment: August 14, 2012, as supplemented by letters dated October 25, November 14, and December 13, 2012, and February 15, 2013.

Brief description of amendment: The amendment revises Technical Specification 3.5.4, ''Refueling Water Storage Tank,'' to permit non-seismically qualified piping of the Spent Fuel Pool purification system to be connected to the Refueling Water Storage Tank seismic piping under administrative controls for a limited period of time in order to purify the contents of the Refueling Water Storage Tank.

Date of issuance: February 22, 2013.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 250.

Facility Operating License No. DPR–64: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 16, 2012 (77 FR 63350). The letters dated October 25, November 14, and December 13, 2012, and February 15, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2013.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: February 28, 2012, supplemented by letters dated September 6, 2012, November 7, 2012, November 29, 2012, February 21, 2013 and February 25, 2013.

Brief description of amendment: The amendment revises the PNP TSs to support the replacement of the Region I main spent fuel (SFP) storage racks and the storage racks in the north tilt pit portion of the SFP, with new neutron absorber Metamic-equipped racks. The replacement of the SFP storage racks will allow recovery of the currently unusable storage locations in the SFP.

Date of issuance: February 28, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 250.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 5, 2012 (77 FR 33246). The supplemental letters dated September 6, 2012, November 7, 2012, November 29, 2012, February 21, 2013 and February 25, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2013.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendments: October 11, 2012, as supplemented by letters dated January 17, February 20, and February 26, 2013.

Brief description of amendments: The amendment request proposed changes to the Technical Specifications (TSs) to revise Section 2.1.1, ''Reactor Core SLs,'' minimum critical power ratio safety limit (MCPR SL) from ≥ 1.11 to ≥ 1.14 for two-loop recirculation operation and from ≥ 1.12 to ≥1.17 for a single-loop recirculation operation.

Date of issuance: February 27, 2013.

Effective date: As of the date of issuance and shall be implemented after Cycle 14 is completed and prior to the operation of Cycle 15.

Amendment No.: 192.

Facility Operating License Nos. NPF–18: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** November 5, 2012 (77 FR 66489).

The January 17, February 20, and February 26, 2013, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 27, 2013.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 22, 2011, as supplemented by letters dated March 30, September 10 and 28, 2012, and January 3, 2013.

Brief description of amendment: The amendment revised the curves in Technical Specification (TS) 3.4.9, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits,'' to replace the 28 Effective Full Power Years (EFPY) restriction in TS Figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 and the minimum temperature in Surveillance Requirement (SR) 3.4.9.5, SR 3.4.9.6, and SR 3.4.9.7. The amendment would include a set of updated P/T curves for pressure test, core not critical, and core critical conditions for 32 EFPY based on a fluence evaluation performed using NRC-approved fluence methodology. The new curves would show a shift of minimum operating temperature which allows the bolt-up and minimum temperatures specified for SR 3.4.9.5, SR 3.4.9.6, and SR 3.4.9.7 to be changed from 80 degrees Fahrenheit (°F) to 70 °F.

Date of issuance: February 22, 2013.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 245.

Renewed Facility Operating License No. DPR–46: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** March 6, 2012 (77 FR 13372). The supplemental letters dated March 30, September 10 and 28, 2012, and January 3, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2013.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of application for amendment: January 20, 2012, as supplemented on December 7, 2012.

Brief description of amendment: The amendment revises the MNGP Technical Specifications (TS) Section 1.0, ''Definitions,'' Section 3.4.9, ''RCS [Reactor Coolant System] Pressure and Temperature (P–T) Limits,'' and Section 5.6, ''Administrative Controls.'' The amendment revises the P–T limits based on a methodology documented in the SIR–05–044–A report, ''Pressure-Temperature Limits Report [PTLR] Methodology for Boiling Water Reactors,'' and relocates the revised P–T limits from the TS to the MNGP PTLR.

Date of issuance: February 27, 2013.

Effective date: This license amendment is effective as of the date of its date of issuance and shall be implemented within 180 days after start-up from the 2013 Refueling Outage.

Amendment No.: 172.

Renewed Facility Operating License No. DPR–22: Amendment revises the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 17, 2012 (77 FR 22815). The licensee's December 7, 2012, supplemental letter did not change the scope of the original amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 2013.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: February 10, 2012, as supplemented by letters dated October 1, 2012, and January 22, 2013.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to establish the limiting condition for operation (LCO)

requirements for the reactor protective system (RPS) actuation circuits in TS 2.15, ''Instrumentation and Control Systems.'' Specifically, the TS changes renumbered LCOs 2.15(1) through 2.15(4) to 2.15.1(1) through 2.15.1(4), renumbered LCO 2.15(5) to LCO 2.15.3 with an associated Table 2–6, ''Alternate Shutdown and Auxiliary Feedwater Panel Functions,'' and implemented a new LCO 2.15.2 for the RPS logic and trip initiation channels. The amendment also revised the TS Table of Contents to reflect the renumbering and addition of the LCO for the RPS logic and trip initiation channels and the new Table 2–6.

Date of issuance: February 28, 2013.

Effective date: As of its date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: 270.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 7, 2012 (77 FR 47128). The supplemental letters dated October 1, 2012, and January 22, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated February 28, 2013.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 1, 2012, as supplemented by letter dated December 21, 2012.

Brief description of amendments: The proposed amendment would make miscellaneous changes to the Technical Specifications (TS) and Facility Operating License (FOL) including: (1) Correction of typographical errors; (2) deletion of historical requirements that have expired; (3) corrections of errors or omissions from previous license amendment requests; and (4) updating of components lists to reflect current plant design.

Date of issuance: February 25, 2013.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 193.

Renewed Facility Operating License No. NPF–57: The amendment revised the TSs and the Facility Operating License.

Date of initial notice in ***Federal Register:*** April 3, 2012 (77 FR 20075). The letter dated December 21, 2012, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 25, 2013.

No significant hazards consideration comments received: No.

South Carolina Electric and Gas. Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: January 15, 2013.

Brief description of amendment: The amendment authorizes a departure from the Virgil C. Summer Nuclear Station Units 2 and 3 plant-specific Design Control Document (DCD) Tier 2* material incorporated into the Updated Final Safety Analysis Report (UFSAR) to revise the requirements for shear reinforcement spacing in the nuclear island basemat below the auxiliary building.

Date of issuance: February 26, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 2—1, and Unit 3—1.

Facility Combined Licenses No. NPF–93 and NPF–94: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** January 25, 2013 (78 FR 5511).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2013.

No significant hazards consideration comments received: No.

South Carolina Electric and Gas. Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: January 18, 2013.

Brief description of amendment: The amendment authorizes a departure from the VCSNS Units 2 and 3 plant-specific Design Control Document (DCD) Tier 2* material incorporated into the Updated Final Safety Analysis Report (UFSAR) by revising the structural criteria code for anchoring of headed shear reinforcement bar within the nuclear island basemat.

Date of issuance: March 1, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 2—2, and Unit 3—2.

Facility Combined Licenses No. NPF–93 and NPF–94: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** January 29, 2013 (78 FR 6145).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2013.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: January 15, 2013.

Brief description of amendment: The proposed amendment would depart from VEGP Units 3 and 4 plant-specific Design Control Document (DCD) Tier 2* material incorporated into the Updated Final Safety Analysis Report (UFSAR) to clarify the requirements for shear reinforcement spacing in the nuclear island basemat below the auxiliary building. The proposed change would modify the provisions for maximum spacing of the shear reinforcement in the basemat below the auxiliary building.

Date of issuance: February 26, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 3—4, and Unit 4—4.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** January 25, 2013 (78 FR 5508).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2013.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of March 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–06164 Filed 3–18–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103, NRC–2013–0044]

URENCO USA (Formerly Louisiana Energy Services, L.P.) License Amendment Request: Notice of Opportunity To Request a Hearing and to Petition for Leave to Intervene, and Commission Order Imposing Procedures for Document Access

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to request a hearing and to petition for leave to intervene and order.

SUMMARY: In November 2012, URENCO USA submitted to the U.S. Nuclear Regulatory Commission (NRC) a license amendment request. The existing license (No. SNM–2010) authorizes operation of a uranium enrichment facility in New Mexico. The facility produces enriched uranium up to a maximum of 5.0 percent U–235, using a gas centrifuge process. If granted, the license amendment would authorize increased annual production capability from the present 3 million separative work units (SWU) to 10 million SWU.

DATES: Requests for a hearing or petition for leave to intervene must be filed by May 20, 2013. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to Sensitive Unclassified Non-Safeguards Information is necessary to respond to this notice must request document access by March 29, 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0044 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0044. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Raddatz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3108; email: *Michael.Raddatz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Notice is hereby given that, by letter dated November 9, 2012, Louisiana Energy Services, L.P. (LES), doing business as URENCO USA (UUSA), submitted to the NRC a license amendment request, pertaining to its uranium enrichment facility located in Lea County, New Mexico. The NRC License No. SNM–2010 authorizes UUSA to possess and use source, byproduct, and special nuclear material at its facility, and authorizes UUSA to produce enriched uranium up to a maximum of 5.0 percent U–235, using a gas centrifuge process. If granted, the license amendment would authorize UUSA to increase its annual production capability from 3 million SWU to 10 million SWU.

An NRC administrative review, documented in a letter to UUSA dated January 25, 2013, found the November 9, 2012, request acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. SNM–2010. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The required findings will be documented in a Safety Evaluation Report. The NRC will also make findings consistent with the National Environmental Policy Act (NEPA) and 10 CFR Part 51.

II. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. You may also call the PDR at 1–800–397–4209, or 301–415–4737. The NRC's regulations are also accessible online in the NRC library at *http://www.nrc.gov/reading-rm/adams.html.*

Pursuant to 10 CFR 2.309(a), any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. Pursuant to 10 CFR 2.309(d), the petition must provide the name, address, and telephone number of the petitioner; and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

A request for hearing or petition for leave to intervene must also identify specific contentions that the petitioner seeks to have litigated in the hearing. As required by 10 CFR 2.309(f), for each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute; or, if the petitioner believes that the application for amendment fails

to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene and requests for hearing, and motions for leave to file new or amended contentions that are filed after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) The information upon which the filing is based is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 20, 2013. The petition must be filed in accordance with the filing instructions in Section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2), State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 20, 2013.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they

can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 12th day of March 2013.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	The U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information). If the NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If the NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2013–06279 Filed 3–18–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2013–0001]

DATES: Weeks of March 18, 25, April 1, 8, 15, 22, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Week of March 18, 2013

There are no meetings scheduled for the week of March 18, 2013.

Week of March 25, 2013—Tentative

There are no meetings scheduled for the week of March 25, 2013.

Week of April 1, 2013—Tentative

Tuesday April 2, 2013

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 8, 2013—Tentative

There are no meetings scheduled for the week of April 8, 2013.

Week of April 15, 2013—Tentative

There are no meetings scheduled for the week of April 15, 2013.

Week of April 22, 2013—Tentative

Tuesday April 23, 2013

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai'ichi Accident (Public Meeting) (Contact: William D. Reckley, 301–415–7490)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: March 14, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–06386 Filed 3–15–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0310; Docket Nos.: 50–445 and 50–446; License Nos.: NPF–87 and NPF–89]

In the Matter of Luminant Generation Company LLC, Comanche Peak Nuclear Power Plant, Units 1 and 2; Order Approving the Proposed Internal Restructuring and Indirect Transfer of License; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission is correcting a notice that was published in the **Federal Register** (FR) on March 5, 2013 (78 FR 14361), regarding the order approving the proposed internal restructuring and indirect transfer of license. This action is necessary to correct the date of a safety evaluation that was incorrectly referenced in Section II of this notice. The safety evaluation date was corrected by letter dated February 25, 2013, which is available in the Agencywide Documents Access and Management System (ADAMS) at Accession No. ML13056A266.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–492–3667; email: *Cindy.Bladey@nrc.gov.*

Correction

In the FR of March 5, 2013, in FR Doc. 2013–05021, on page 14362, second column, first complete paragraph, correct the last sentence to read:

The findings set forth above are supported by a safety evaluation dated February 22, 2013.

Dated in Rockville, Maryland, this 13th day of March 2013.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2013–06238 Filed 3–18–13; 8:45 am]

BILLING CODE 7590–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Agency Information Collection Activities: Renewal of Currently Approved Collection; Comment Request

ACTION: Notice of submission to Office of Management and Budget and 30-day public comment period.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is giving public notice that it will submit a currently approved information collection to the Office of Management and Budget (OMB) for renewal. The public and affected federal agencies are invited to comment on the proposed approval renewal pursuant to the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments must be submitted to OMB at the address below on or before April 18, 2013 to be assured of consideration.

ADDRESSES: Send all comments to Sharon Mar, Desk Officer for the Recovery Accountability and Transparency Board, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax 202–395–5167; or email to *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the PRA, the Board invites the general public and affected federal agencies to comment on the proposed information collection approval renewal. The Board published a previous notice of proposed information collection approval renewal on December 26, 2012, *see* 77 FR 76097 (Dec. 26, 2012), *corrected at* 78 FR 4175 (Jan. 18, 2013). No comments were received. On February 19, 2013, OMB granted the Board's request for an emergency extension of the information collection approval, extending the expiration date of the current approval from February 28, 2013, to March 31, 2013. The purpose of this notice is to allow for an additional 30 days for public comment pursuant to 5 CFR 1320.10.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information

collection is necessary for the proper performance of the functions of the Board; (b) the accuracy of the Board's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection.

In this notice, the Board is soliciting comments concerning the following information collection:

Title of Collection: FederalReporting.gov Recipient Registration System.

ICR Reference No.: 200912–0430–001.

OMB Control No.: 0430–0002.

ICR Status: The approval for this information collection is scheduled to expire on 3/31/2013.

Description: Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009) (Recovery Act), requires recipients of Recovery Act funds to report on the use of those funds. These reports are submitted to *FederalReporting.gov,* and certain information from these reports is then posted to the publically available Web site *Recovery.gov.*

The *FederalReporting.gov* Recipient Registration System (FRRS) was developed to protect the Board and *FederalReporting.gov* users from individuals seeking to gain unauthorized access to user accounts on *FederalReporting.gov.* FRRS is used for the purpose of verifying the identity of the user; allowing users to establish an account on *FederalReporting.gov;* providing users access to their *FederalReporting.gov* account for reporting data; allowing users to customize, update, or terminate their accounts with *FederalReporting.gov;* and renewing or revoking a user's account on *FederalReporting.gov,* thereby protecting *FederalReporting.gov* and *FederalReporting.gov* users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

To assist in this goal, FRRS will collect a registrant's name, email address, telephone number and extension, three security questions and answers, and, by way of a DUNS number, organization information. The person registering for *FederalReporting.gov* will generate a self-assigned password that will be stored on the FRRS, but will only be accessible to the registering individual.

Affected Public: Private sector, and state, local, and tribal governments.

Total Estimated Number of Respondents: 1,000.

Frequency of Responses: Once.

Total Estimated Annual Burden Hours: 83.

Dated: March 14, 2013.

Atticus J. Reaser,

General Counsel, Recovery Accountability and Transparency Board.

[FR Doc. 2013–06278 Filed 3–18–13; 8:45 am]

BILLING CODE 6820–GA–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69129; File No. SR–CBOE–2013–033]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Complex Orders and Mini-Options

March 13, 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 March 7, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 its rules related to complex orders. The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.org/legal*) at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE recently amended its rules to allow for the listing of mini-options on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'').[3] Mini-option trading is expected to commence in March 2013. Whereas standard option contracts represent a deliverable of 100 shares of an underlying security, mini-options contracts represent a deliverable of 10 shares. Except for the difference in the number of deliverable shares, mini-options have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. Accordingly, the Exchange noted in its original mini-option filing that Exchange rules that apply to the trading of standard option contracts would apply to mini-option contracts as well.[4]

Prior to the commencement of trading mini-options, the Exchange proposes to amend Rule 6.53C (Complex Orders on the Hybrid System) and Rule 6.80 (Definitions) to provide that Exchange rules regarding complex orders shall apply to mini-options and that consequently, Trading Permit Holders may execute complex and stock-option orders involving mini-options. Moreover, the Exchange seeks to amend these rules to provide that all permissible ratios referenced in the definitions of stock-option orders represent the total number of shares of the underlying stock in the option leg to the total number of shares of the underlying stock in the stock leg.

By way of background, CBOE Rule 6.53C governs Complex Orders on the Hybrid System and CBOE Rule 6.80 lists definitions applicable to intermarket linkage. Currently, stock-option orders are defined in Rule 6.53C(a)(2) and 6.80(4)(ii)(A)–(B) as trades where the options leg of the trade is coupled with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR–CBOE–2013–001).

[4] *Id.*

the purchase or sale of either (1) the same number of units of the underlying stock or convertible security, or (2) the number of units of the underlying stock or convertible security necessary to create a ''delta neutral'' position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation. Therefore, under this definition it would be permissible to execute, for example, a trade where the options leg consists of one (1) standard option contract (i.e., 100 shares) and the stock leg consists of 100 shares of the underlying stock. Additionally, it would be permissible to execute a trade where the options leg consists of eight (8) standard option contracts (i.e., 800 shares) and the stock leg consists of 100 shares of the underlying stock.

Next, ''complex order'' in Rule 6.53C(a)(1) and ''complex trade'' in Rule 6.80(4)(i) (collectively referred to as ''complex orders'') [5] is defined as any order involving the execution of two or more different options series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00).

The Exchange notes that the abovementioned permissible ratios were established to ensure that only complex and stock-option orders that seek to achieve legitimate investment strategies are afforded certain benefits. Particularly, since compliance with trade-through rules may impede a market participant's ability to achieve the legitimate investment strategies that complex and stock-option orders facilitate, an exception from the prohibition on trade-throughs is provided for any transaction that was effected as a portion of a legitimate complex or stock-option order. Requiring a meaningful relationship between the different legs of a complex or stock-option order prevents market participants from taking advantage of these orders to circumvent the otherwise applicable trade-through rules (e.g., preventing the execution of a stock-option order where the option leg consists of 100 options (i.e., 10,000 shares) and the stock leg consists of only 100 shares).

The Exchange first proposes to amend the definition of ''stock-option orders'' in Rule 6.53C(a)(2) and Rule 6.80(4)(ii)(A)–(B). As discussed above, the stock-option order definition in both Rule 6.53C and Rule 6.80 clearly permits that an option leg may be coupled with a stock leg representing the same number of units of the underlying stock (i.e., one-to-one ratio). The Exchange seeks to provide that mini-options may also be coupled with a stock leg if the stock leg represents the same number of units of the underlying stock. For example, pursuant to the definition, it would be permissible to execute a trade where leg one consists of one (1) mini-option contract (i.e., 10 shares) and leg two consists of 10 shares of the underlying stock.

Next, the Exchange seeks to amend the stock-option order definition in Rule 6.53C and Rule 6.80 to provide that in addition to standard options, mini-options may be coupled with a stock leg consisting of however many units of the underlying stock is necessary to create a delta neutral position, provided that the total number of shares of the underlying stock in the option leg to the total number of shares of the underlying stock in the stock leg does not exceed an eight-to-one ratio. The Exchange notes the definition of a stock-option order in Rule 6.53C and Rule 6.80 was drafted at a time in which only option contracts with a deliverable of 100 shares was contemplated. Therefore, the rules do not address how the eight-to-one ratio would be scaled in the event an option with a non-standard deliverable becomes available for trading. The language of the rules needs to be amended so that it is clear how Rule 6.53C and 6.80 would apply to mini-options, as well as standard options. Accordingly, the proposed change specifies that the permissible ratios should be calculated and scaled based upon the total number of *shares of the underlying stock* in the option leg to the total number of shares of the underlying stock in the stock leg, instead of by the total number of *option contracts* in the option leg to the total number of shares of the underlying stock in the stock leg. An example of a permitted stock-option order involving mini-options would be an order in which leg one consists of eighty (80) mini-options (i.e., 800 shares) and leg two consists of 100 shares of the underlying stock (i.e., eight-to-one ratio). Similarly, an order where leg one consists of eight (8) mini-options (i.e. 80 shares) and leg two consists of 10 shares of the underlying stock would be permitted.

The proposed rule change provides that market participants may execute stock-option orders involving mini-options. The proposed change also ensures that the principle behind the permissible ratios (i.e., to provide a meaningful relationship between the legs of complex and stock-option orders) is maintained for mini-options. Finally, the Exchange notes that reference to the Clearing Corporation in Rule 6.53C(a)(2) and 6.80(4)(ii)(A)–(B) was superfluous and unnecessary and therefore deleted.

Next the Exchange seeks to make clear that it interprets its current definition of a ''complex order'' in Rule 6.53C(a)(1) and ''complex trade'' in Rule 6.80(4)(i)–(ii) to apply to both standard options and mini-options. The Exchange seeks to provide that in accordance to the provisions of Rule 6.53C and Rule 6.80, one leg of a complex order may consist of mini-option contract(s) and the other leg of the order may consist of standard option(s), so long as the underlying security is the same and the transaction does not violate the permissible ratios set forth in the rules (i.e., ratio greater or equal to one-to-three or less or equal to three-to-one). Moreover, the Exchange seeks to clarify that these permissible ratios represent the total number of shares of the underlying stock in the mini-option leg to the total number of shares of the underlying stock in the standard option leg. An example of a permissible complex order involving mini-options and standard options would be an order in which leg one consists of thirty (30) mini-options (i.e., 300 shares) and leg two consists of one (1) standard option (i.e., 100 shares) in the same underlying security (i.e., a ratio equal to 3.0). Another example of a permissible complex order would be an order in which leg one consists of ten (10) mini-options (i.e., 100 shares) and leg two consists of one (1) standard option (i.e., 100 shares) in the same underlying security (i.e., a ratio equal to one-to-one). The proposed clarification will reduce potential confusion for investors when trading of mini-options becomes effective.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[6] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect

[5] The definitions of ''complex order'' in Rule 6.53C(a)(1) and ''complex trade'' in Rule 6.80(4)(i) are substantially identical.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would allow market participants to take advantage of legitimate investment strategies and execute complex orders and stock-option orders in mini-options. Additionally, the Exchange believes the proposed rule change will avoid investor confusion if both standard options and mini-options on the same underlying security are permitted to trade as complex orders and stock-option orders. Also, the proposal to maintain the permissible ratios that are applicable to standard options in proportion for mini-options ensures that the principle behind the permissible ratios (i.e., to provide a meaningful relationship between the legs of complex and stock-option orders) is maintained for mini-options, which promotes just and equitable principles of trade. The Exchange believes that describing prior to the commencement of trading how the permissible ratios in the complex order and stock-option order rules will be scaled for mini-options would lessen investor and marketplace confusion.

Finally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all market participants may participate in complex or stock-option orders involving mini-options.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since mini-options are permitted on multiply-listed classes, other exchanges that have received approval to trade mini-options will have the opportunity to similarly amend their complex order rules to clarify and accommodate complex orders and stock-option orders in mini-option classes. Moreover, because all Trading Permit Holders may participate in complex and stock-options orders involving mini-options, the rule change does not permit unfair discrimination and does not impose a burden on Trading Permit Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(6) [9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) of the Act [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii) of the Act,[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In January 2013, the Exchange filed a proposed rule change to amend its rules to list and trade certain mini-options contracts on the Exchange, and represented in that filing that the Exchange's rules that apply to the trading of standard options contracts would apply to mini-options contracts.[12] The Exchange has represented that it intends to launch trading in mini-options contracts on March 18, 2013.[13] The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would minimize confusion among market participants about how complex orders and stock-options orders involving mini-options contracts will trade.[14]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to implement the proposed rule change prior to its launch of mini-options contracts trading on March 18, 2013, thereby mitigating potential investor confusion as to how complex orders and stock options orders involving mini-options contracts will trade. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[15]

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–033 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2013–033. 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

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See supra* note 3.

[13] *See* SR–CBOE–2013–033, Item 7.

[14] *See id.*

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–033, and should be submitted on or before April 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06239 Filed 3–18–13; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69132; File No. SR–NASDAQ–2013–041]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Penny Pilot and Non-Penny Pilot Options

March 13, 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 March 1, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' 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 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 proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Penny Pilot Options[3] Rebates to Add Liquidity and certain Non-Penny Pilot Options[4] Fees for Adding and Removing Liquidity.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange is proposing to amend the Customer,[5] Professional,[6] Non-NOM Market Maker[7] and NOM Market Maker[8] Penny Pilot Options Rebates to Add Liquidity and the NOM Market Maker Non-Penny Pilot Options Fees for Adding and Removing Liquidity.

The Exchange proposes to reduce the current Non-NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from $0.25 to $0.10 per contract in order that a Non-NOM Market Maker would be paid the same rebates as a Firm[9] and Broker-Dealer.[10] The Exchange also proposes to amend the Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options and add a new Tier 7 rebate. Currently, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2013. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); and 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013). *See also* NOM Rules, Chapter VI, Section 5.

[4] Non-Penny Pilot Pricing includes NDX. For transactions in NDX, a surcharge of $0.10 per contract is added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

[5] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[6] The term ''Professional'' or (''P'') 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) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[7] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[8] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[9] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[10] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Exchange offers Customers and Professionals a Rebate to Add Liquidity if they qualify for a tier based on their monthly volume. The Exchange has a six tier rebate structure as follows:

Monthly volume	Rebate to add liquidity
Tier 1 Participant adds Customer and Professional liquidity of up to 24,999 contracts per day in a month	$0.26
Tier 2 Participant adds Customer and Professional liquidity of 25,000 to 34,999 contracts per day in a month	0.40
Tier 3 Participant adds Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month	0.43
Tier 4 Participant adds Customer and Professional liquidity of 75,000 or more contracts per day in a month	0.44
Tier 5 Participant adds (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market	0.42
Tier 6 Participant has Total Volume of 130,000 or more contracts per day in a month	0.46

The Exchange proposes to amend Tier 6 to qualify the current requirement that a Participant with Total Volume of 130,000 or more contacts per day in a month will receive a rebate of $0.46 per contract to require that 25,000 or more of the Total Volume to qualify for Tier 6 must be Customer or Professional liquidity. In addition, the Exchange also proposes to add a new Tier 7 which would pay an increased rebate of $0.48 per contract if a Participant has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month [11] or (3) adds Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month. Similar to Tier 6, the Exchange shall define Total Volume as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity on NOM.[12] For purposes of Tier 7, the Exchange would allow NOM Participants under Common Ownership [13] to aggregate their volume to qualify for the rebate. The Exchange believes that the amendment to Tier 6 and the addition of Tier 7 will incentivize Participants to transact additional Customer and Professional volume. The addition of Tier 7 will also incentivize Participants to post NOM Market Maker liquidity on NOM.

The Exchange proposes to amend the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from $0.30 per contract to a four tier rebate structure. The Exchange proposes to pay a Tier 1 rebate of $0.25 per contract for Participants that add NOM Market Maker liquidity in Penny Pilot and Non-Penny Pilot Options of up to 39,999 contracts per day in a month. The Exchange proposes to pay a Tier 2 rebate of $0.30 per contract for Participants that add NOM Market Maker liquidity in Penny Pilot and Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month. The Exchange proposes to pay a Tier 3 rebate of $0.32 per contract for Participants and its affiliates under Common Ownership [14] that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to pay a Tier 4 rebate of $0.32 [15] or $0.38 per contract in the following symbols, iShares MSCI Emerging Markets Index (''EEM''), SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), PowerShares QQQ (''QQQ''), SPDR S&P 500 (''SPY''), iPath S&P 500 VIX ST Futures ETN (''VXX'') and Financial Select Sector SPDR (''XLF''), if Participants add NOM Market Maker liquidity of 90,000 or more contracts per day in a month. The Exchange believes that offering NOM Market Makers the ability to obtain higher rebates will encourage NOM Market Makers to post greater liquidity on NOM.

The Exchange also proposes to increase the NOM Market Maker Non-Penny Pilot Fee for Adding Liquidity from $0.25 to $0.35 per contract and the Fee for Removing Liquidity from $0.82 to $0.85 per contract. The Exchange proposes to increase these fees in order to offer NOM Market Makers an opportunity to earn higher rebates in Penny Pilot Options for transacting both Penny and Non-Penny Pilot Options.

The Exchange also proposes technical amendments to capitalize the term ''common ownership'' as that term is defined in Chapter XV and add the words ''on NOM'' to the definition of Total Volume as described herein.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(4) of the Act,[17] in particular, in that they 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 NASDAQ operates or controls.

The Exchange believes that its proposal to reduce the Non-NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options from $0.25 to $0.10 per contract is reasonable because the Exchange proposes to offer Non-NOM Market Makers the same rebate as Firms and Broker Dealers. The Exchange believes that offering Customers, Professionals and NOM Market Makers the opportunity to earn higher rebates is reasonable because by incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants and incentivizing NOM Market Makers to

[11] The reference to national volume refers to volume on all options markets. NASDAQ OMX PHLX LLC (''Phlx'') and the Chicago Board Options Exchange Incorporated (''CBOE'') utilize a similar national volume number to calculate rebates. Phlx pays customer rebates based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx. *See* Phlx's Pricing Schedule at Section A. 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 percentage thresholds in a month as described in the Volume Incentive Program. *See* CBOE's Fees Schedule.

[12] The Exchange is proposing to add the words ''on NOM'' to the Total Volume definition solely to clarify that this volume refers to transactions on the Exchange.

[13] Common ownership is defined in Chapter XV as Participants under 75% common ownership or control.

[14] *See* note 12.

[15] The Exchange would pay $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

post liquidity will also benefit participants through increased order interaction. Today, the Exchange assesses Non-NOM Market Makers, Firms and Broker-Dealers the same fees for adding and removing liquidity in all symbols. The Exchange is proposing to likewise pay these market participants the same rebates.

The Exchange believes that the amendments to the Penny Pilot Options Rebates to Add Liquidity are equitable and not unfairly discriminatory for various reasons. The Exchange believes that paying Customers and Professionals a tiered Rebate to Add Liquidity in Penny Pilot Options, as proposed herein, is equitable and not unfairly discriminatory as compared to other market participants. Pursuant to this proposal, the Exchange would pay the highest Tier 1 Rebate to Add Liquidity in Penny Pilot Options of $0.26 per contract to Customers and Professionals for transacting one qualifying contract as compared to other market participants.[18] The Exchange believes that Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professional the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory because the Exchange is offering Professionals the same rebates as today, with the exception of Tier 6, which is being amended, and Tier 7, which is new. The Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. The Exchange has been assessing the impact of rebates since it first began to offer them and has also observed the impact of fees and rebates on other options exchanges in terms of quoting and liquidity. The Exchange believes that the Fees for Adding Liquidity in Penny Pilot Options, as compared to Rebates to Add Liquidity, impact a market participant's decision-making more prominently with respect to posting order flow on different venues and price. In modifying its rebates and offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. In addition, a Participant may not be able to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume. A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price. Further, the Exchange initially established Professional pricing in order to ''* * * bring additional revenue to the Exchange.'' [19] The Exchange noted in the Professional Filing that it believes ''* * * that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.'' [20] The Exchange also noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a customer and market maker, accomplishes this objective.[21] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers.[22] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. Finally, the Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting [23] and the commitment of capital.

The Exchange believes the amended Tier 6 rebate and new Tier 7 Customer and Professional Rebates to Add Liquidity in Penny Pilot Options are reasonable, equitable and not unfairly discriminatory because the Exchange is offering Participants meaningful incentives to increase their participation on NOM in terms of higher Penny Pilot Options Rebates to Add Liquidity and fee reductions which reduce costs. The Exchange's proposal to amend the Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is reasonable because the Exchange believes that requiring a certain amount of the Total Volume to consist of Customer or Professional liquidity will continue to attract liquidity to the Exchange to the benefit of all market participants. The Exchange believes the amendment to the Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because all Participants may qualify for the rebate and such incentives will benefit other market participants through the increased liquidity that such Customer and Professional order flow will bring to the Exchange.

The Exchange's proposal to add a new Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options and pay an increased rebate of $0.48 per contract to Participants that transact Total Volume of 325,000 contracts or more per day, in a month, add Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or add Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month is reasonable,

[18] The NOM Market Maker Tier 1 Rebate to Add Liquidity in Penny Pilot Options would be $0.25 per contract pursuant to this proposal and all [sic] other market participants would receive a $0.10 per contract rebate.

[19] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[20] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

[21] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066). The Exchange noted in this filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[22] The Fee for Removing Liquidity in Penny Pilot Options is $0.47 per contract for all market participants, except Customers. Customers are assessed $0.45 per contract.

[23] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

equitable and not unfairly discriminatory because the Exchange believes that Participants will be incentivized to execute an even greater number of orders on the Exchange, add a greater amount of Customer and Professional liquidity on NOM and post a greater amount of NOM Market Maker liquidity, which in turn benefits all market participants. The Exchange believes the existing monthly volume thresholds have incentivized Participants to increase Customer and Professional order flow to the Exchange. The Exchange desires to continue to encourage Participants to route Customer and Professional orders, and post NOM Market Maker orders, to the Exchange by offering increased Customer and Professional Rebates to Add Liquidity in Penny Pilot Options. All Participants that transact Customer and Professional orders in Penny Pilot Options are and will continue to be eligible for the Customer and Professional rebates.[24]

The Exchange's proposal to permit Participants to qualify for Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options by adding Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month is reasonable because measuring Customer and Professional liquidity as a percentage of national customer volume in the industry relative to those contracts executed on NOM allows the Exchange to control and account for changes in national industry-wide multiply-listed options volume. Further, allowing Participants to combine equity options volume with that of ETFs will provide Participants an opportunity to qualify for this rebate tier. The Exchange's proposal to permit Participants to qualify for Tier 7 by adding Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month is equitable and not unfairly discriminatory because it will be applied to all Participants in a uniform matter. Any Participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer and Professional volume as required. The Exchange believes that permitting Participants to otherwise qualify for Tier 7 by transacting Total Volume of 325,000 contracts or more per day, in a month, or adding Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month is reasonable because the Exchange already allows Participants to obtain rebates today based on Total Volume and offering to allow Participants to qualify for Tier 7 by adding a certain mix of Customer, Professional and NOM Market Maker liquidity provides Participants additional opportunities to obtain a higher rebate and benefit other market participants by the liquidity and order interaction that such order flow will bring to NOM. As stated previously, the other means to qualify for Tier 7 (other than adding Customer and Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month), transacting Total Volume of 325,000 contracts or more per day, in a month, or adding Customer and Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month, is equitable and not unfairly discriminatory because all Participants may achieve this rebate by transacting the appropriate level of volume required by Tier 7.

The Exchange believes that the new NOM Market Maker Penny Pilot Options Rebates to Add Liquidity tiers are reasonable because the Exchange is offering NOM Market Makers the ability to obtain higher rebates by posting liquidity on NOM. The Exchange proposes to pay NOM Market Makers a Tier 1 Rebate to Add Liquidity of $0.25 per contract in Penny Pilot Options for adding up to 39,999 contracts per day in a month of Penny or Non-Penny Pilot Options. While the Exchange is paying Customers and Professionals higher rebates for adding Penny Pilot Options Customer and Professional liquidity in Tiers 1 and 2 for volume up to 39,999 contracts,[25] the NOM Market Maker can achieve that volume by aggregating Penny and Non-Penny Pilot Options in order to obtain a $0.25 per contract Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options and may be able to achieve the $0.30 per contract Tier 2 rebate, as is the case today, by adding Penny and Non-Penny Pilot Options contract volume. The highest rebate a NOM Market Maker can achieve with the proposed tier structure is $0.38 per contract, which is higher than the current NOM Market Maker rebate of $0.30 per contract and remains lower than the Customer and Professional Tier 2 rebate, as is the case today. The Exchange believes that the proposed NOM Market Maker rebate tier structure is reasonable because the Exchange is incentivizing NOM Market Makers to earn higher rebates by posting a greater number of contracts on NOM. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity. The Exchange believes that the NOM Market Maker rebate proposal is equitable and not unfairly discriminatory because it does not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will continue to earn lower rebates as compared to Customers and Professionals for most rebate tiers except as described herein, a NOM Market Maker will earn a lower Tier 1 rebate as compared to the current $0.30 rebate.

With respect to the rebate tiers, the Exchange believes that the tiers are reasonable because although Tier 1 pays a lower rebate of $0.25 per contract as compared to today's NOM Market Maker rebate, as mentioned herein, Participants may add NOM Market Maker liquidity in either Penny Pilot or Non-Penny Pilot Options, up to 39,999 contracts per day in a month, to obtain that rebate. Today, the Exchange similarly allows Customers and Professionals to obtain rebates by transacting Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker or NOM Market Maker volume in Penny Pilot Options or Non-Penny Pilot Options which either adds or removes liquidity on NOM (known as ''Total Volume'') to qualify for a rebate. Likewise, the Exchange is proposing that NOM Market Makers may qualify for Rebates to Add Liquidity in Penny Pilot Options by transacting either Penny or Non-Penny Pilot Options. The Exchange believes that incentivizing NOM Market Makers to post liquidity in Penny and Non-Penny Pilot Options in

[24] Pursuant to this proposal, Tier 1 pays a rebate of $0.26 per contract to Participants that add Customer and Professional liquidity of up to 24,999 contracts per day in a month of Penny Pilot Options. There is no required minimum volume of Customer and Professional orders to qualify for the Customer or Professional Rebate to Add Liquidity in Penny Pilot Options.

[25] The Exchange pays $0.26 per contract for Customer and Professional Penny Pilot Options liquidity up to 24,999 contracts per day in a month (Tier 1), $0.40 per contract for Customer and Professional Penny Pilot Options liquidity between 25,000 and 34,999 contracts per day in a month (Tier 2) and $0.43 per contract for Customer and Professional Penny Pilot Options liquidity between 35,000 to 74,999 contracts per day in a month (Tier 3).

order to obtain a rebate is reasonable, equitable and not unfairly discriminatory because participants will benefit through increased order interaction and all NOM Market Makers have a similar opportunity to obtain the rebate. As mentioned, the Exchange believes that NOM Market Makers are provided an opportunity to qualify for a Tier 2 rebate, and obtain the same $0.30 per contract rebate as today, because they can aggregate Penny and Non-Penny Pilot Options volume. A Participant that adds NOM Market Maker liquidity in either Penny Pilot or Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month would achieve the same $0.30 per contract rebate as NOM Market Makers receive today. The Exchange believes that these first two NOM Market Maker rebate tiers are reasonable because NOM Market Makers will be incentivized to be more aggressive in posting liquidity on NOM to achieve higher rebates or the same rebate. The Exchange believes that rebate Tiers 1 and 2 are equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the tiers and every NOM Market Maker is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, as mentioned, the NOM Market Maker would receive a higher rebate in Tier 1 as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations borne by NOM Market Makers as compared to other market participants.

The Exchange's proposal to pay a Tier 3 NOM Market Maker rebate of $0.32 per contract for Participants and its affiliates under Common Ownership that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is reasonable because as mentioned herein, NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. By further incentivizing Participants to achieve the Tier 7 Customer and Professional Rebate to Add Liquidity, the Exchange is seeking to add a greater amount of Customer and Professional liquidity to the marketplace which benefits all Participants as well as reduce costs not only to Professionals and Customers in paying the Tier 7 Customer and Professional rebate, but also NOM Market Makers by offering the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange's proposal to pay a Tier 3 rebate of $0.32 per contract for Participants and its affiliates under Common Ownership that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the Tier 3 NOM Market Maker rebate provided they are able to qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. As mentioned herein, there are various opportunities to achieve a Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.

The Exchange's proposal to pay a Tier 4 NOM Market Maker rebate of $0.32[26] or $0.38 per contract in EEM, GLD, IWM, QQQ, SPY, VXX and XLF if the Participant adds NOM Market Maker liquidity of 90,000 or more contracts per day in a month is reasonable because the Exchange believes that offering NOM Market Makers the ability to obtain higher rebates will encourage additional order interaction. The Exchange's proposal to pay a Tier 4 NOM Market Maker rebate of $0.32[27] or $0.38 per contract in EEM, GLD, IWM, QQQ, SPY, VXX and XLF if the Participant adds NOM Market Maker liquidity of 90,000 or more contracts per day in a month is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the Tier 4 NOM Market Maker rebate.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt specific pricing for EEM, GLD, IWM, QQQ, SPY, VXX and XLF because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes, in this case actively traded Penny Pilot Options.[28] The Exchange notes that EEM, GLD, IWM, QQQ, SPY, VXX and XLF are some of the most actively traded options in the U.S. The Exchange believes that this pricing will incentivize members to transact options on EEM, GLD, IWM, QQQ, SPY, VXX and XLF on NOM in order to obtain the higher $0.38 per contract rebate.

The Exchange believes that its proposal to increase the NOM Market Maker Non-Penny Pilot Fee for Adding Liquidity from $0.25 to $0.35 per contract and the Fee for Removing Liquidity from $0.82 to $0.85 per contract is reasonable because the Exchange desires to offer NOM Market Makers the opportunity to earn higher rebates by transacting Penny and Non-Penny Pilot Options, which order flow benefits other market participants. These fees will assist the Exchange in offering such rebates. The Exchange believes that its proposal to increase the NOM Market Maker Non-Penny Pilot Fee for Adding Liquidity from $0.25 to $0.35 per contract and the Fee for Removing Liquidity from $0.82 to $0.85 per contract is equitable and not unfairly discriminatory because the Exchange would continue to assess lower fees to NOM Market Makers, as compared to all other Participants except Customers,[29] as is the case today, because NOM Market Makers add value through continuous quoting[30] and the commitment of capital.

With respect to Tier 3, the Exchange proposes to pay the $0.32 per contract rebate to Participants or its affiliates under Common Ownership that qualify for Tier 7. The Exchange proposes to allow Participants to aggregate their volume with affiliates in order to qualify for this Tier of the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. The Exchange also proposes to permit Participants to allow NOM Participants under Common Ownership to aggregate their volume to qualify for the rebate. The Exchange believes that its proposal to permit Participants under Common Ownership to aggregate their volume is reasonable, equitable and not unfairly discriminatory because the Exchange would permit all Participants

[26] The Exchange would pay $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[27] The Exchange would pay $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[28] See Phlx's Pricing Schedule. *See also* the International Securities Exchange LLC's Fee Schedule. Both of these markets segment pricing by symbol.

[29] Customers do not pay Non-Penny Pilot Fees for Adding Liquidity and today are assessed an $0.82 per contract Non-Penny Pilot Fee for Removing Liquidity.

[30] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

the ability to aggregate for purposes of the rebates if certain Participants chose to operate under separate entities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Customers have traditionally been paid the highest rebates offered by options exchanges. While the Exchange's proposal results in a Professional receiving a higher rebate as compared to a NOM Market Maker, in certain circumstances, the Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants. The Exchange's proposal also aligns the Non-NOM Market Maker Penny Pilot Rebate to Add Liquidity with that of a Firm and Broker-Dealer. The Exchange's proposal to increase Non-Penny Pilot Options Fees for Adding and Removing Liquidity does not misalign the current fees as NOM Market Makers will continue to be assessed lower fees as compared to a Non-NOM Market Maker, Firm or Broker-Dealer because of the additional obligations that are required of NOM Market Makers as compared to these market participants. Customers continue to pay a lower Fee for Removing Liquidity in Non-Penny Pilot Options, which is currently the case for most fees on NOM which are either not assessed to a Customer or where a Customer is assessed the lowest fee because of the liquidity such order flow brings to the Exchange.

The Exchange believes that offering Customers and Professionals the proposed tiered rebates creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Customer and Professional order flow. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate structure and tiers are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals set forth above.

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.[31] 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–2013–041 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2013–041. 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–2013–041, and should be submitted on or before April 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

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[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69130; File No. SR–C2–2013–012]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

March 13, 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 March 1, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its transaction fees for simple, non-complex orders in equity options classes to state that C2 Market-Makers will not be assessed a fee for Maker trades with any non-Public Customer market participants. This means that when a C2 Market-Maker is the Maker in a transaction, the C2 Market-Maker will not be assessed a fee unless the Taker in the transaction is a Public Customer. The purpose of the proposed change is to incentivize C2 Market-Makers to quote more aggressively.

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that proposed change is reasonable because it will allow C2 Market-Makers to avoid paying a transaction fee for transactions for which they previously paid a transaction fee.

The Exchange believes that providing this Maker fee exemption to C2 Market-Makers and not to other market participants is equitable and not unfairly discriminatory because C2 Market-Makers take on a number of obligations, including quoting obligations and the need to purchase permits, that some other market participants do not have. Further, offering a fee exemption for C2 Market-Makers (and only C2 Market-Maker Makers), who are the market participants that do the vast majority of quoting, incentivizes more and narrower quoting, thereby encouraging liquidity provision, which is vital to the marketplace and benefits all market participants. The Exchange believes that assessing Maker fees for C2 Market-Makers who trade with Public Customers while not assessing Maker fees for C2 Market-Makers who trade with other market participants is equitable and not unfairly discriminatory because the Exchange already pays a rebate for Public Customer Taker transactions, and thus if the Exchange were to also not collect a fee from the C2 Market-Maker in such transactions, it would result in the Exchange paying for such transactions without collecting any revenue (a net negative), which would not be economically prudent. Further, market participants (including C2 Market-Makers) generally prefer to execute their orders against Public Customer orders, and therefore it is justifiable for them to be still be assessed a fee for such preferable executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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 does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because, while it will provide C2 Market-Makers with a fee exemption that other market participants do not receive, this change is intended to incentivize C2 Market-Makers, who are the market participants that do the vast majority of quoting, to provide more and narrower quoting, thereby encouraging liquidity provision, which is vital to the marketplace and benefits all market participants. Further, C2 Market-Makers take on a number of obligations, including quoting obligations and the need to purchase permits, that some other market participants do not have. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intermarket competition because it is designed to encourage more and narrower quoting, which would make C2 a more attractive trading venue for Market-Makers as well as other market participants on other exchanges who could benefit from C2's improved quotes. As such, to the extent that the proposed change may make C2 a more attractive trading venue for market participants on other exchanges, such market participants can always elect to become C2 market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and paragraph (f) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–012. 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–C2–2013–012 and should be submitted on or before April 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06250 Filed 3–18–13; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69131; File No. SR–NYSEMKT–2013–23]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of Certain Securities

March 13, 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 March 5, 2013, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade option contracts overlying 10 shares of a security (''mini-options contracts''). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to list and trade option contracts overlying 10 shares of a security (''mini-options contracts'') and implement rule text necessary to integrate mini-options contracts with contracts overlying 100 shares (''standard contracts'') of the same security. Whereas standard contracts represent a deliverable of 100 shares of an underlying security, mini-options contracts would represent a deliverable of 10 shares. The Exchange proposes to initially list and trade mini-options contracts overlying five high priced securities for which the standard contract overlying the same security exhibits significant liquidity.[3] The Exchange believes that investors would benefit from the availability of mini-options contracts by making options overlying high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor.

For example, with Apple Inc. (''AAPL'') trading at $605.85 on March 21, 2012, ($60,585 for 100 shares underlying a standard contract), the 605 level call expiring on March 23 was trading at $7.65. The cost of the standard contract overlying 100 shares would be $765, which is [sic] substantially higher in notional terms than the average equity option price of $250.89.[4] Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of $76.50 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five mini-options contracts. The table below demonstrates the proposed differences between a mini-options contract and a standard contract with a strike price of $125 per share and a bid or offer of $3.20 per share:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes that mini-options contracts would be listed in only five issues, specifically SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN). These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (''ADV'') over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted with the Commission.

[4] A high priced underlying security may have relatively expensive options, because a low percentage move in the share price may mean a large movement in the options in terms of absolute dollars. Average non-FLEX equity option premium per contract January 1–December 31, 2011. *See http://www.theocc.com/webapps/monthly-volume-reports?reportClass=equity.*

	Standard	Mini
Share Deliverable Upon Exercise	100 shares	10 shares.
Strike Price	125	125.
Bid/Offer	3.20	3.20.
Premium Multiplier	$100	$10.
Total Value of Deliverable	$12,500	$1,250.
Total Value of Contract	$320	$32.

The Exchange currently lists and trades standardized option contracts on a number of equities and Exchange-Traded Funds (''ETFs'') each with a unit of trading of 100 shares. Except for the difference in the number of deliverable shares, the proposed mini-options contracts would have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. All existing rules applicable to options on equities and ETFs would apply to mini-options contracts, except with respect to position and exercise limits and hedge exemptions to those position limits, which would be tailored for the smaller size. Pursuant to proposed amendments to Rule 904, position limits applicable to a regular-sized option contract would also apply to the mini-options contracts on the same underlying security, with 10 mini-options contracts counting as one regular-sized contract. Positions in both the regular-sized option contract and mini-options contracts on the same security will be combined for purposes of calculating positions.

Also, of note, the Commission has approved an earlier proposal of the Exchange to list and trade option contracts overlying a number of shares other than 100.[5] Moreover, the concept of listing and trading parallel options products of reduced values and sizes on the same underlying security is not novel. For example, parallel product pairs on a full-value and reduced-value basis are currently listed on the S&P 500 Index (''SPX'' and ''XSP,'' respectively), the Nasdaq 100 Index (''NDX'' and ''MNX,'' respectively) and the Russell 2000 Index (''RUT'' and ''RMN,'' respectively).

The Exchange believes that the proposal to list and trade mini-options contracts will not lead to investor confusion. There are two important distinctions between mini options and standard options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed mini-options contracts will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 959NY(c) which notes that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of ''.50'' shall represent an offer of $5.00 on an options contract having a unit of trading consisting of 10 shares. Additionally, the Exchange intends to designate mini-options contracts with different trading symbols than those designated for regular-sized contracts.[6] Moreover, the Exchange believes that the terms of mini-options contracts are consistent with the terms of the Options Disclosure Document.

The Exchange recognizes the need to differentiate mini-options contracts from standard options and therefore is proposing the following changes to its rules.

The Exchange proposes to add Commentary .01 to Rule 901 (Option Contracts to Be Traded) to reflect that, in addition to option contracts with a unit of trading of 100 shares, the Exchange may list option contracts overlying 10 shares of SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN) for all expirations applicable to 100 share options on each underlying security. The Exchange believes that these five securities are appropriate because they are high priced securities for which there is already significant options liquidity and therefore significant customer demand.

The Exchange also proposes to add Commentary .15 to Rule 903 (Series of Options Open for Trading) to list series of mini-options provided that the underlying security has been designated as eligible under Rule 901, Commentary .01. Also, the Exchange proposes to not permit the listing of additional series of mini-options contracts if the underlying is trading at $90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a $90.01 minimum for continued qualification so that additional mini-options strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above $90 for five consecutive days before the listing of mini-options contracts in a new expiration month. This restriction will allow the Exchange to list mini-options strikes without disruption when a new expiration month is added even if the underlying has had a minor decline in price.

The Exchange also proposes to add Commentary .14 to Rule 904 (Position Limits) to reflect that, for purposes of compliance with the Position Limits of Rules [sic] 904, ten mini-options contracts will equal one standard contract overlying 100 shares.

The Exchange also proposes to add subsection (c) to Rule 959NY (Meaning of Premium Bids and Offers) to extend the explanation of bids and offers with respect to mini-options contracts and also remove references to Exchange-Traded Fund Shares, because other types of underlying securities have options traded on them.

Mini-options with non-standard expiration dates (*e.g.,* weekly series, quarterly option series and LEAPs) will be permitted under this proposal and in accordance with relevant Exchange rules. The Exchange may list mini-options on SPY, AAPL, GLD, GOOG and AMZN for all expirations applicable to 100-share options on the same underlying.[7]

The Exchange's rules that apply to the trading of standard options would apply to mini-options and the Exchange's market maker quoting obligations would apply to mini-options.[8] Intermarket trade-through protection would apply to mini-options; however, price protection would not apply across standard and mini-options on an intramarket basis.[9]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and

[5] *See* Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (SR–Amex–96–44).

[6] OCC Symbology is structured for contracts with other than 100 shares to be designated with a numerical suffix to the standard trading symbol, *i.e.,* AAPL8.

[7] *See* Securities Exchange Act Release No. 67948 (September 28, 2012) 77 FR 60735 at 60737 (October 4, 2012) (Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes as Modified by Amendments No. 1 to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR–NYSEArca–2012–64 and SR–ISE–2012–58).

[8] *See* 77 FR at 60738.

[9] *See* 77 FR at 60738.

represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of mini-options contracts. The Exchange has further discussed the proposed listing and trading of mini-options contracts with the OCC, which has represented that it is able to accommodate the proposal.[10]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[11] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors would benefit from the availability of mini-options contracts by making options on high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor. As described above, the proposal contains a number of features designed to protect investors by reducing investor confusion, such as the mini-options contracts being designated by different trading symbols from their related standard contracts.[13] Moreover, the proposal is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, the proposed contracts will provide retail customers who invest in high priced issues in lots of less than 100 shares with a means of protecting their investments that is presently only available to those who have positions of 100 shares or more. Further, the proposal currently is limited to five high priced securities for which there is already significant options liquidity, and therefore significant customer demand and trading volume.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated below, the Exchange notes that the rule change is being proposed as a competitive response to recently approved rule amendments by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can list and trade the proposed mini-options contracts as soon as it is able.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[17] The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission, and does not raise any new regulatory issues.[18] For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEMKT–2013–23 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–NYSEMKT–2013–23. 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

[10] The Exchange notes that the current schedule of Fees will not apply to the trading of mini-options contracts. The Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 8 [sic].

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[16] The Commission notes that the Exchange's current schedule of fees will not apply to the trading of mini-options contracts, and the Exchange will not commence trading of mini-options contracts until specific fees for mini-options contracts trading have been filed with the Commission.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR–NYSEArca–2012–64 and SR–ISE–2012–58).

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–NYSEMKT–2013–23 and should be submitted on or before April 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06251 Filed 3–18–13; 8:45 am]

BILLING CODE 8011–01–P

STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Cote d'Ivoire has adopted an effective visa system and related procedures to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents in connection with the shipment of such articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, as specified in this notice, imports of eligible products from Cote d'Ivoire qualify for the textile and apparel benefits provided for under AGOA.

DATES: *Effective Date:* March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Constance Hamilton, Deputy Assistant United States Trade Representative for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200, as amended provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents in connection with shipment of such articles; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products. In Proclamation 8741 (October 25, 2011), the President designated Cote d'Ivoire as a ''beneficiary sub-Saharan Africa country'' and proclaimed that, for purposes of section 112(c) of the AGOA, Cote d'Ivoire shall be considered a lesser developed beneficiary sub-Saharan African country.

In Proclamation 7350 (October 2, 2000), the President authorized the USTR to perform the function of determining whether eligible sub-Saharan beneficiary countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Cote d'Ivoire has taken, I have determined that Cote d'Ivoire has satisfied these two requirements. Accordingly, pursuant to the authority assigned to the USTR in Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS, and U.S. notes 1 and 2(d) to subchapter XIX of the HTS are modified by inserting ''Cote d'Ivoire'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on date of publication. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. See Visa Requirements Under the African Growth and Opportunity Act, 66 FR 7837 (2001).

Ron Kirk,

United States Trade Representative.

[FR Doc. 2013–06274 Filed 3–18–13; 8:45 am]

BILLING CODE 3190–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2012 Generalized System of Preferences (GSP) Product Review: Inviting Public Comments on Possible Actions Related to Competitive Need Limitations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of comments.

SUMMARY: This notice announces the availability of full 2012 calendar year import statistics relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. The Office of the United States Trade Representative (USTR) will accept public comments submitted by April 12, 2013, regarding: (1) Possible *de minimis* CNL waivers; (2) possible redesignations of articles currently not eligible for GSP benefits because they previously exceeded the CNL thresholds; and (3) potential revocation of CNL waivers.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Room 422, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov.*

DATES: Public comments are due by 5:00 p.m., Friday, April 12, 2012.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions Related to CNLs

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (''the 1974 Act'').

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLs. When the President determines that a BDC exported to the United States during a calendar year either: (1) A quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($155 million for 2012), or (2) a quantity of a GSP-eligible article having

[19] 17 CFR 200.30–3(a)(12).

a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent'' CNL), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year, unless a waiver is granted. As announced in a December 28, 2012, **Federal Register** notice (FRN), petitions for CNL waivers are being considered under a separate timeline than that of the actions on CNLs set forth in this FRN.

De minimis waivers: Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($21 million for 2012).

Redesignations: Under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations in sections 501 and 502 of the 1974 Act, redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

CNL waiver revocation: Under Section 503(d)(5) of the 1974 Act, a CNL waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances. Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432, also provides that, ''[n]ot later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for five years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year ($232.5 million in 2012); or (II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.''

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2013, unless granted a waiver by the President. Any CNL-based exclusions, CNL waiver revocations, and decisions with respect to *de minimis* waivers and redesignations will be based on full 2012 calendar year import data.

II. 2012 Import Statistics

In order to provide notice of articles that have exceeded the CNLs for 2012 and to afford an opportunity for comment regarding (1) potential *de minimis* waivers, (2) redesignations, and (3) the potential revocation of waivers for articles exceeding the CNL waiver thresholds for 2012, USTR has posted product lists on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/current-review* under the title ''2012 GSP Annual Product Review: Import Statistics Relating to Competitive Need Limitations, Potential Revocations, *De Minimis* Waivers, and Product Redesignations.'' These lists can also be found at *www.regulations.gov* in Docket Number USTR–2012–0013. Full 2012 calendar year data for individual tariff subheadings may also be viewed on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov.*

The lists available on the USTR Web site contain, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC country of origin, the value of imports of the article for the 2012 calendar year, and the percentage of total imports of that article from all countries.

The lists published on the USTR Web site are for informational purposes only. They may not include all articles to which the GSP CNLs may apply. All determinations and decisions regarding the CNLs of the GSP program will be based on full 2012 calendar year import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2012 import data with respect to the possible application of the GSP CNL provisions.

List I on the USTR Web site shows GSP-eligible articles from BDCs that exceeded a CNL by having been exported in excess of $155 million, or in a quantity equal to or greater than 50 percent of the total U.S. import value, in 2012. These products will be removed from eligibility for GSP for the subject countries on July 1, 2013, unless the President grants a waiver for the product for the subject country in response to a petition filed by an interested party. Such petitions for CNL waivers must have been previously submitted in the 2012 GSP Annual Review. (See 77 FR 44704 and 77 FR 76594.) The last column in List I shows those products for which petitions have been accepted and are now under review.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL, but that are eligible for a *de minimis* waiver of the 50 percent CNL. Articles eligible for *de minimis* waivers are automatically considered in the GSP annual review process, without the filing of a petition. Public comments (including comments in support of or in opposition to *de minimis* waivers) are invited in accordance with the Requirements for Submissions set out below.

List III shows GSP-eligible articles from certain BDCs that are currently not receiving GSP duty-free treatment, but that may be considered for GSP redesignation based on 2012 trade data and consideration of certain statutory factors. Recommendations to the President on redesignations are normally made as part of the GSP annual review process, and public comments (including comments in support of or in opposition to redesignations) are invited in accordance with the Requirements for Submissions below.

List IV shows articles subject to CNL waiver revocation based on the provisions of Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432. Recommendations to the President on revocation of these waivers will be made as part of the 2012 GSP annual review process, and public comments (including comments in support of or in opposition to revocations of CNL waivers) are invited in accordance with the Requirements for Submissions below.

III. Public Comments

Requirements for Submissions

Written comments submitted in response to this notice must be submitted electronically by 5:00 p.m., Friday, April 12, 2013 using *www.regulations.gov,* docket number USTR–2012–0013. Instructions for submitting business confidential versions are provided below. Hand-delivered submissions will not be accepted. Comments must be submitted in English to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee. All submissions for the GSP Annual Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.* Any person or party making a submission is strongly advised to review the GSP regulations as well as the GSP Guidebook, which is available at the same link.

To make a submission using *www.regulations.gov,* enter the docket number in the ''Search for'' field on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket number. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' in the ''Filter Results by'' section on the left side of the screen and click on the link entitled ''Comment Now.'' The *www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. The GSP Subcommittee prefers that submissions be provided in an attached document. At the beginning of the submission, or on the first page (if an attachment), please note that the submission is in response to this notice and provides comments on the product(s) described in the notice. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *www.regulations.gov.* The tracking number will be the submitter's confirmation that the comments were received into *www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

An interested party requesting that information contained in a submission be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. For any submission containing business confidential information, a non-confidential version must be submitted separately (*i.e.,* not as part of the same submission with the confidential version), indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing, usually within two weeks of the relevant due date. Such submissions may be viewed by entering the country-specific docket number in the search field at: *http://www.regulations.gov.*

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2013–06229 Filed 3–18–13; 8:45 am]

BILLING CODE 3190–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Cleveland-Hopkins International Airport, Cleveland, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its findings on the noise compatibility program submitted by the City of Cleveland, Ohio under the provisions of 49 U.S.C. 47501 et seq. (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 (hereinafter referred to as ''Part 150''). On June 6, 2012, the FAA determined that the noise exposure maps submitted by the City of Cleveland, Ohio under Part 150 were in compliance with applicable requirements. On November 29, 2012 the FAA approved the Cleveland-Hopkins International Airport noise compatibility program. Twelve recommendations were granted outright approval; six were approved in part; one was withdrawn; one was disapproved; and one required no action.

DATES: This notice is effective March 19, 2013, and is applicable beginning December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Katherine S. Delaney, 11677 S. Wayne Road, Suite 107, Romulus, Michigan; Email: *Katherine.S.Delaney@faa.gov*; Phone: 734–229–2900. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has made a determination on each measure in the Noise Compatibility Program for Cleveland Hopkins International Airport, effective November 29, 2012.

Under section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel. Each airport noise compatibility program developed in accordance with Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in

Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required. Prior to an FAA decision on a request to implement the action, an environmental review of the proposed action may be required. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under applicable law contained in Title 49 U.S.C. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Romulus, Michigan.

The Cleveland-Hopkins International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from 2011 to the year 2017. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 47504 of the Act. The FAA began its review of the program on June 6, 2012 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program. A total of twenty-one proposed actions for noise abatement, land use planning and program management on and off the airport were evaluated. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program was approved by the FAA, effective November 29, 2012.

Outright approval was granted for twelve specific program measures. The measures that were granted outright approved were: Continue voluntary restriction of run-ups and engine maintenance testing as specified in the 1987 NCP and updated in the 2000 NCP; Continue to encourage the use of noise abatement departure profiles (NADPs); Adopt land use development controls and construction standards in the local communities surrounding the Airport to include those within the 60 dB DNL contour; Adopt real estate disclosure policies regarding airport noise exposure in the local communities surrounding the Airport, to include those within the 60 dB DNL contour; Complete sound insulation of residences within the higher levels of the Noise Exposure, 65+ DNL; Sound insulation program within 60 dB DNL contours; Expand capabilities of the Airport's Noise and Operations Monitoring System (NOMS) by acquiring and installing six new permanent noise monitors and more fully utilizing the analysis capabilities of the current software; Investigate the feasibility of a new state-of-the-art NOMS system to replace the current system in its entirety; Expand the content of the Airport's Quarterly Noise Reports; Update the tower's Standard Operating Procedures Manual to reflect all FAA-approved NCP measures; Retain the current Part 150 working group and continue to report on information regarding noise issues; and Continue periodic updates of the NCP and reviews of the NEMs.

The FAA approved the following measures in part: Develop and implement new RNAV flight procedures for departures from Runways 6L and 6R; Develop and implement new RNAV flight procedures for departures from Runways 24L and 24R; Modify existing standard instrument departures (SIDs) to reduce early turns after take-off; Designate Runway 6R as the preferred late night (11:00 p.m. to 6:00 a.m.) departure runway; Wind and weather permitting, instruct arriving aircraft at night (10:00 p.m. to 6:59 a.m. to intercept the final approach course to all runways no closer than four miles; and Update the ''Fly Quiet'' Communication Program.

The FAA disapproved one measure: Encourage the FAA and airlines operating at CLE to use optimized profile descents (OPDs) between 11:00 p.m. and 6:00 a.m. for arrivals to Runway 6L, 6R, 24L, and 24R. No action was taken on one measure: Add a minimum turn altitude to initial departure clearances.

The Airport Sponsor requested one measure to be withdrawn: Construction of enclosed ground run-up facility. These determinations are set forth in detail in a Record of Approval signed by the Great Lakes Airports Division Manager on November 29, 2012. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Cleveland-Hopkins International Airport, Ms. Traci Clark, Deputy Chief Planning and Engineering, Cleveland-Hopkins International Airport, 5301 W. Hangar Road, Cleveland, Ohio 44135.

The Record of Approval will also be available on-line at: *http://www.faa.gov/airports airtraffic/airports/environmental/airport noise/part 150/states/.*

Issued in Romulus, Michigan, on December 12, 2012.

John L. Mayfield, Jr.,

Manager, Detroit.

[FR Doc. 2013–06266 Filed 3–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property at the Ankeny Regional Airport, Ankeny, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Ankeny Regional Airport, Ankeny, Iowa, under the provisions of U.S.C.

DATES: Comments must be received on or before April 18, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Polk County Aviation Authority, John Pighetti, President, C/O Brick Gentry P.C., 6701 Westown Parkway, Suite 100, West Des Moines, IA 50266, 515–274–1450.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov*.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 1.67 acres of airport property at the Ankeny Regional Airport (IKV) under the provisions of 49 U.S.C. 47107(h)(2). On January 24, 2013, the Airport Authority at the Ankeny Regional Airport requested from the FAA that approximately 1.67 acres of

property be released for sale to Lucille M. Johnson and family for use as a farming operation. On January 31, 2013, the FAA determined that the request to release property at the Ankeny Regional Airport (IKV) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Ankeny Regional Airport (IKV) is proposing the release of one parcel, of 1.67 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Ankeny Regional Airport (IKV) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Ankeny Regional Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Ankeny Regional Airport.

Issued in Kansas City, MO, on March 12, 2013.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2013–06267 Filed 3–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0024]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 8 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before April 18, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0024 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow theon-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 8 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Tom Campbell

Mr. Campbell, age 57, has enucleation in his right eye due to a traumatic incident in 1985. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''Mr. Campbell has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Campbell reported that he has driven straight trucks for 6 years, accumulating 60,000 miles. He holds a Class A Commercial Driver's License (CDL) from Pennsylvania. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 23 miles per hour.

Joe Cunningham

Mr. Cunningham, 61, has had histoplasmosis in his left eye since 2000. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''He has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cunningham reported that he has driven straight trucks for 22 years, accumulating 264,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dolan A. Gonzalez, Jr.

Mr. Gonzalez, 37, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''Due to the long-standing nature of these conditions and Dolan's history of previously performing as a commercial driver, it should have no further effect on his driving skills as these are stable and non-progressive.'' Mr. Gonzalez reported that he has driven straight trucks for 6 years, accumulating 156,000 miles. He holds an operator's license from Florida. His driving record for the last 3 years shows no crashes but one conviction for a moving violation in a CMV; he passed through/around a barrier.

Paul R. Harpin

Mr. Harpin, 55, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100, and in his left eye, 20/15. Following an examination in 2013, his optometrist noted, ''I certify that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harpin reported that he has driven straight trucks for 18 years, accumulating 540,000 miles, and tractor-trailer combinations for 15 years, accumulating 375,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry L. Lipscomb

Mr. Lipscomb, 42, has had refractive amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2012, his optometrist noted, ''In my opinion, Mr. Lipscomb has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lipscomb reported that he has driven straight trucks for 1 year, accumulating 11,500 miles, and tractor-trailer combinations for 11 years, accumulating 185,900 miles. He holds an operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald G. Reed

Mr. Reed, 51, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2012, his optometrist noted, ''In my professional opinion this patient should have no problems from his eyes or vision to affect his duties as a professional truck driver.'' Mr. Reed reported that he has driven straight trucks for 12 years, accumulating 1 million miles, and tractor-trailer combinations for 4 years, accumulating 813,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy T. Richardson

Mr. Richardson, 60, has had refractive amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''He can identify traffic signals without difficulty and has sufficient vision to operate a commercial vehicle.'' Mr. Richardson reported that he has driven straight trucks for 36 years, accumulating 1.6 million miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James E. Smith

Mr. Smith, 56, has had refractive amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''I have recently examined James E. Smith and I found his vision sufficient to perform the driving task to operate a commercial vehicle as his vision has been stable, he has been safely operating a commercial vehicle for years.'' Mr. Smith reported that he has driven straight trucks for 20 years, accumulating 1 million miles, and tractor-trailer combinations for 25, accumulating 2.5 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 18, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 8, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–06193 Filed 3–18–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35715 (Sub-No. 1)]

Norfolk Southern Railway Company—Temporary Trackage Rights Exemption—Grand Trunk Western Railroad Company and Wisconsin Central Ltd.

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial revocation of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. FD 35715 [1] to permit the

[1] In that docket, on January 28, 2013, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice addressed an agreement in which Grand Trunk Western Railroad Company and Wisconsin Central Ltd. (collectively, CN) granted temporary overhead trackage rights to NSR over the CN rail lines located: (1) Between CN's connection with NSR at or near milepost 99.5 in South Bend, Ind., and at or near milepost 36.1 in Griffith, Ind., on CN's South Bend Subdivision, a distance of approximately 63.4 miles; and (2) between milepost 36.1 in Griffith and CN's Kirk Yard at or near milepost 45.4 in Gary on CN's Matteson Subdivision, a distance of approximately 9.3 miles. *See Norfolk S. Ry.—Temporary Trackage Rights Exemption—Grand Trunk W. R.R.,* FD 35715 (STB served Feb. 13, 2013). NSR states that this notice was not filed under the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8) because the agreement contemplates that the temporary trackage rights will be in effect for more than one year. *See* 49 CFR 1180.2(d)(8)

Continued

trackage rights to expire 24 months after the commencement date of the agreement, or the date that the Gary City Track Connection, which is located at or near Gary, Ind., is completed and in use, whichever comes first, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

DATES: This decision is effective on April 18, 2013. Petitions to stay must be filed by March 29, 2013. Petitions for reconsideration must be filed by April 8, 2013.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No. FD 35715 (Sub-No. 1) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NSR's representative: Christine I. Friedman, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: March 13, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–06313 Filed 3–18–13; 8:45 am]

BILLING CODE 4915–01–P

(''Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are * * * scheduled to expire on a specific date not to exceed 1 year from the effective date of the exemption.'') At that time, NSR also filed for the instant partial revocation of the class exemption in this proceeding. In the February 13, 2013 notice, the Board stated that it would address that request in a subsequent decision, which it is doing here.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8802

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8802, Application for United States Residency Certification.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for United States Residency Certification.

OMB Number: 1545–1817.

Form Number: Form 8802.

Abstract: An entity must use Form 8802 to apply for United States Residency Certification. All requests for U.S. residency certification must be received on Form 8802, Application for United States Residency Certification. This application must be sent to the Philadelphia Service Center. As proof of residency in the United States and of entitlement to the benefits of a tax treaty, U.S. Government certification that you are a U.S. citizen, U.S. corporation, U.S. partnership, or resident of the United States for purposes of taxation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institution.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 3 hours, 38 minutes.

Estimated Total Annual Burden Hours: 363,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06230 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2010–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2010–13, Section 469 Grouping activities.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 469 Grouping activities.

OMB Number: 1545–2156.

Notice Number: Revenue Procedure 2010–13.

Abstract: This revenue procedure requires taxpayers to report to the Internal Revenue Service their groupings and regroupings of activities and the addition of specific activities within their existing groupings of activities for purposes of section 469 of the Internal Revenue Code and § 1.469–4 of the Income Tax Regulations.

Current Actions: Extension of currently approved collection. There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business and for-profit.

Estimated Number of Respondents: 144,000.

Estimated Average Time per Respondent: 16 mins.

Estimated Total Annual Burden Hours: 39,000 hrs.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06220 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning rules for certain rental real estate activities.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06224 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning allocation and apportionment of deduction for state income.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Deduction for State Income Taxes.

OMB Number: 1545–1224.

Regulation Project Number: INTL–112–88.

Abstract: This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06228 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning general rules for making and maintaining qualified electing fund elections.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: General Rules for Making and Maintaining Qualified Electing Fund Elections.

OMB Number: 1545–1555.

Regulation Project Number: REG–115795–97.

Abstract: This regulation provides guidance to a passive foreign investment company (PFIC) shareholder that makes the election under Code section 1295 to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis. Guidance is also provided on revoking such elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institutions.

Estimated Number of Respondents: 1,290.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 623.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally,

tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06225 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8869

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8869, Qualified Subchapter S Subsidiary Election.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Subchapter S Subsidiary Election.

OMB Number: 1545–1700.

Form Number: 8869.

Abstract: Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 8 hrs., 9 mins.

Estimated Total Annual Burden Hours: 40,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06227 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 973

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 973,

Corporation Claim for Deduction for Consent Dividends.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Corporation Claim for Deduction for Consent Dividends.

OMB Number: 1545–0044.

Form Number: Form 973.

Abstract: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and the IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hrs., 25 mins.

Estimated Total Annual Burden Hours: 2,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06232 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

OMB Number: 1545–0045.

Form Number: Form 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 7 hours, 40 minutes.

Estimated Total Annual Burden Hours: 3,830.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06231 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06221 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning source of income from certain space and ocean activities; also, source of communications income.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income.

OMB Number: 1545–1718.

Regulation Project Number: REG–106030–98.

Abstract: The information requested in proposed sections 1.863–8(g) and 1.863–9(g) is necessary for the Service to audit taxpayers' returns to ensure that taxpayers are applying the regulation properly.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 250.

Estimated Average Time per Respondent/Recordkeeper: 5 hours.

Estimated Total Annual Reporting/Recordkeeping Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06219 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning creditability of foreign taxes.

DATES: Written comments should be received on or before May 20, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Regulation Project Number: LR–100–78.

Abstract: Section 1.901–2A of the regulation contains special rules that apply to taxpayers engaging in business transactions with a foreign government that is also taxing them. In general, such taxpayers must establish what portion of a payment made pursuant to a foreign levy is actually tax and not compensation for a economic benefit received from the foreign government. One way a taxpayer can do this is by electing to apply the safe harbor formula of section 1.901–2A by filing a statement with the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 37.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–06222 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 53 March 19, 2013

Part II

Nuclear Regulatory Commission

10 CFR Parts 20, 30, 32, et al.
Physical Protection of Byproduct Material; Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73

[NRC–2008–0120; NRC–2010–0194]

RIN 3150–AI12

Physical Protection of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material. The NRC considers these quantities to be risk significant and, therefore, to warrant additional protection. Category 1 and category 2 thresholds are based on the quantities established by the International Atomic Energy Agency (IAEA) in its Code of Conduct on the Safety and Security of Radioactive Sources, which the NRC endorses. The objective of this final rule is to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material. The regulations also include security requirements for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The final rule affects any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material, any licensee that transports these materials using ground transportation, and any licensee that transports small quantities of irradiated reactor fuel. The rule also considers a petition for rulemaking (PRM–71–13) submitted by the State of Washington that requested that the NRC adopt the use of global positioning satellite tracking as a national requirement for vehicles transporting highly radioactive mobile or portable radioactive devices.

DATES: *Effective Date:* This final rule is effective on May 20, 2013.

Compliance Date: Compliance with this final rule is required on March 19, 2014.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- Federal Rulemaking Web site: Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0120. Public comments on the guidance document supporting this rule can be found by searching Docket ID NRC–2010–0194. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

Availability of Guidance

The NRC is issuing new guidance for the implementation of the requirements of 10 CFR part 37. The guidance document is NUREG–2155, Implementation Guidance for 10 CFR part 37, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material'' (ADAMS Accession No. ML13053A061). This guidance is publicly available as stated in this **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 01–415–8126, email: *Merri.Horn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
PRM 71–1
II. Discussion
A. General Applicability
B. Background Investigations and Access Authorization Program
C. Physical Protection During Use
D. Transportation Security
III. Summary and Analysis of Public Comments on the Proposed Rule
IV. Discussion of Final Amendments by Section
V. Criminal Penalties
VI. Agreement State Compatibility
VII. Plain Writing
VIII. Voluntary Consensus Standards
IX. Finding of No Significant Environmental Impact: Availability
X. Paperwork Reduction Act Statement
XI. Regulatory Analysis
XII. Regulatory Flexibility Certification
XIII. Backfit Analysis
XIV. Congressional Review Act

I. Background

The NRC has long participated in efforts to ensure radioactive source protection and security. The terrorist attacks of September 11, 2001, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant quantities of radioactive materials could lead to their use in a radiological dispersal device (RDD) or a radiological exposure device (RED).

The NRC's current regulations provide requirements for the safe use, transportation, and control of licensed radioactive material. Loss of control of risk-significant radioactive material, whether inadvertent or through a deliberate act, could result in significant adverse impacts that could reasonably constitute a threat to the public health and safety or the common defense and security of the United States. In the changed threat environment after the attacks of September 11, 2001, the Commission determined that certain licensed material should be subject to enhanced security requirements and safeguarded during transport, and that individuals with unescorted access to risk-significant quantities of radioactive material should be subject to background investigations.

As part of the development of the enhanced security measures, the NRC performed threat and vulnerability assessments to identify gaps or vulnerabilities in security and the effectiveness and costs of certain physical protection enhancements at various licensed facilities. The results of these assessments were used in the development of security enhancement orders that were issued to licensees using a graded approach based on the relative risk and quantity of material possessed by the licensee.

The NRC issued the first series of orders to certain panoramic and underwater irradiator licensees that possessed more than 370 Terabequerels (TBq) (10,000 curies (Ci)) of radioactive material (EA–02–249; June 6, 2003) (68 FR 35458; June 13, 2003). The next series of orders were issued to certain manufacturing and distribution (M&D) licensees (EA–03–225; January 12, 2004) (69 FR 5375; February 4, 2004). These orders require the implementation of additional security measures and the protection of the licensee's physical

protection information as Safeguards Information—Modified Handling (SGI–M). The original orders are not publicly available because they contain detailed security requirements that are designated as SGI–M. However, redacted versions of these orders have been made available to the public (73 FR 33859; June 13, 2008, and 73 FR 49714; August 22, 2008). These orders were issued to both NRC and Agreement State licensees under the NRC's authority to protect the common defense and security.

Subsequently, the NRC issued Increased Control Orders (EA–05–090; November 14, 2005) (70 FR 72128; December 1, 2005) to other licensees authorized to possess certain risk-significant quantities of radioactive material (category 1 and category 2 quantities). The Increased Control Orders do not contain safeguards information (SGI) or SGI–M, and are available on the NRC's public Web site at *http://www.nrc.gov/security/byproduct/orders.html.* These orders were issued under the NRC's authority to protect public health and safety, and require licensees to implement enhanced security measures known as Increased Controls. To effect nationwide implementation of the Increased Control Orders, each Agreement State issued legally binding requirements to impose enhanced security measures, identical to the Increased Controls, for licensees under that State's regulatory jurisdiction.

All of the orders described above specifically address the security of byproduct material possessed in quantities equal to or greater than category 1 or category 2 quantities. The orders provide for enhanced security measures for such things as license verification before the transfer of these materials, access control, intrusion detection and response, and coordination with local law enforcement authorities (LLEAs). The orders also contain requirements for the licensee to determine the trustworthiness and reliability of individuals permitted unescorted access to risk-significant radioactive materials. The determination involves a background investigation of the individual. The background investigations were originally limited to local criminal history records checks with law enforcement agencies, verification of employment history, education, personal references, and confirmation of employment eligibility (legal immigration status).

In 2005, Congress passed, and the President signed, the Energy Policy Act of 2005 (EPAct). The EPAct amended Section 149 of the Atomic Energy Act (AEA) to authorize the Commission to require to be fingerprinted any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check. With this new authority, the Commission determined that individuals who have access to category 1 and category 2 quantities of radioactive material warrant fingerprinting and FBI criminal history records checks.

On October 17, 2006, the NRC issued orders to panoramic and underwater irradiator licensees (EA–06–248) (71 FR 63043; October 27, 2006), M&D licensees (EA–06–250) (71 FR 63046; October 27, 2006), and licensees making shipments of category 1 quantities of radioactive material (EA–06–249) (71 FR 62302; October 24, 2006) to require fingerprinting and FBI criminal history records checks for unescorted access to risk-significant quantities of radioactive material at their facilities. In issuing these orders, the NRC noted that a malevolent act by an individual with unescorted access to these materials could result in significant adverse impacts to the public health and safety or the common defense and security and, thus, necessitated expedited implementation of fingerprinting requirements. The orders were issued to both NRC and Agreement State licensees under the NRC's authority to protect the common defense and security. On December 5, 2007, the NRC issued orders to all other NRC licensees that possessed category 1 or category 2 quantities of radioactive material (EA–07–305) (72 FR 70901; December 13, 2007) to require fingerprinting and FBI criminal history records checks for unescorted access to category 1 or category 2 quantities of radioactive material. These orders were issued under the NRC's authority to protect the public health and safety and are available on the NRC's public Web site at *http://www.nrc.gov/security/byproduct/orders.html.* To effect nationwide implementation, each Agreement State issued legally binding requirements consistent with the Increased Control Orders to licensees under their regulatory jurisdiction.

In 2005, the NRC issued two sets of orders to licensees transporting radioactive material in quantities of concern. The first set of transportation security orders was issued to certain licensees that might be expected to transport radioactive materials in category 1 quantities (EA–05–006; July 19, 2005) (70 FR 44407; August 2, 2005). These orders require the implementation of additional security measures and the protection of the licensee's physical protection information as SGI–M. The original orders are not publicly available because they contain detailed security requirements that are designated as SGI–M. However, a redacted version of the order is publicly available (73 FR 51016; August 29, 2008). These orders were issued to both NRC and Agreement State licensees under the NRC's authority to protect the common defense and security.

Subsequently, the NRC issued orders (EA–05–090; November 14, 2005) (70 FR 72128; December 1, 2005) to specifically address the transportation security of byproduct material transported in quantities equal to or greater than category 2. The Increased Control Orders mentioned earlier also contain requirements for transporting category 2 quantities of radioactive material. The additional security measures contained in these two sets of orders provide for enhanced security measures during transportation that are beyond the regulations then applicable, and include: Enhanced security in preplanning and coordinating shipments; advance notification of shipments to the NRC and States through which the shipment will pass; control and monitoring of shipments that are underway; trustworthiness and reliability of transport personnel; information security considerations; and control of mobile or portable devices such as radiography cameras and well-logging devices.

In November 2009, the NRC issued the Increased Control Order and the Fingerprint Order to power reactor licensees that are undergoing decommissioning (EA–09–204 and EA–09–205; November 23, 2009) (74 FR 66168 and 74 FR 66164; December 14, 2009). The orders required these licensees to implement the Increased Controls and to obtain fingerprints and criminal history records checks for individuals to have or continue having unescorted access to aggregated category 1 or category 2 quantities of radioactive material.

In December 2009, the NRC issued orders to service provider licensees that were not manufacturers or distributors (EA–09–293; December 16, 2009 (75 FR 160; January 4, 2010). The order required service provider licensees to implement specific measures to ensure the trustworthiness and reliability of

their service representatives that have unescorted access to category 1 or category 2 quantities of radioactive materials.

The requirements put in place by all these above-described orders supplement the existing regulatory requirements. These additional requirements are primarily intended to provide reasonable assurance of preventing the theft or diversion of risk-significant radioactive material. These requirements provide the Commission with reasonable assurance that public health and safety and the common defense and security continue to be adequately protected.

It is the Commission's preference to implement generically applicable requirements through rulemaking rather than by orders. An order is legally binding only on the licensee or licensees receiving the order. Further, the notice-and-comment rulemaking process allows members of the public to provide comments on the proposed rule.

This rulemaking promulgates generically applicable security requirements for licensees possessing category 1 and category 2 quantities of radioactive material in the regulations. New requirements for background investigations and an access authorization program are included to ensure that individuals who have access to these materials have gone through background investigations and are determined to be trustworthy and reliable. New requirements are also included to establish physical protection systems to detect, assess, and respond to unauthorized access to category 1 and category 2 quantities of radioactive material. For transport of the radioactive materials, new requirements for recipient license verification; preplanning and coordination of shipments; advance notification of shipments; notification of shipment delays, schedule changes, and suspected loss of a shipment; and control and monitoring of shipments are included. The amendments also include security requirements for shipments of irradiated reactor fuel that weigh 100 grams (g) (0.22 pounds (lb)) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 meters (m) (3.3 feet (ft)) from any accessible surface without intervening shielding.

In developing this final rule, the NRC considered, among other things, the various orders, lessons-learned during implementation of the orders, the recommendations of the Independent External Review Panel and the Materials Program Working Group, and stakeholder comments received on the proposed rule and the draft implementation guidance. The Commission chartered the Independent External Review Panel to: (1) Identify vulnerabilities in the NRC's materials licensing program with respect to import, export, specific, and general licenses; (2) validate the ongoing byproduct material security efforts; and (3) evaluate the apparent ''good faith presumption'' in the NRC licensing process that had in the past justified minimal investigation of new license applicants or inspection of their facilities before allowing their possession of radioactive material. The Panel's March 2008 report is available in ADAMS under Accession No. ML080700957. The Materials Program Working Group conducted a comprehensive evaluation of the materials program to identify short- and long-term strategies to mitigate security vulnerabilities. The Working Group report contains sensitive information and is not publicly available. However, the Group's comments on the Panel's report are publicly available in ADAMS under Accession No. ML080660424.

PRM–71–13

On July 16, 2008 (73 FR 40767), the NRC published the resolution and closure of a petition for rulemaking filed by Christine O. Gregoire, Governor of the State of Washington (PRM–71–13). The NRC indicated that the issues raised by the petitioner would be considered in an ongoing rulemaking on security requirements for the transportation of radioactive material in quantities of concern.

The petitioner requested that the NRC adopt the use of global positioning system (GPS) tracking as a national requirement for vehicles transporting highly radioactive mobile or portable radioactive devices. As an alternative, the petitioner stated that the Commission could grant States the flexibility to impose more stringent requirements than those required under the current Increased Controls Orders. The petitioner believes that GPS technology is an effective and relatively inexpensive tool that would give law enforcement a significant advantage in locating a missing source. However, the petitioner acknowledged that requiring a GPS on these vehicles does not ensure that the radiological source will be found.

The NRC considered the issues identified by the petitioner and the petitioner's suggested approach to address those issues in the decision-making process and final determination of the rule requirements in the area of the petitioner's concern. The NRC ultimately did not include a requirement for GPS tracking in the rule. However, the rule does contain a requirement to use a telemetric position monitoring system or an alternative tracking system when transporting category 1 quantities of radioactive material. Use of GPS would be one method to satisfy this requirement. For licensees transporting category 2 quantities of radioactive material, tracking is not required. The licensee is required to maintain constant control or surveillance during transit. In addition, the rule at § 37.53 imposes additional security measures on mobile devices that includes using a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. The NRC believes that these requirements provide adequate protection for mobile devices and that GPS is neither justified nor necessary. The majority of the transportation security requirements are Compatibility Category B because there are direct and significant transboundary implications. Because the requirements are Compatibility B, Agreement States must adopt program elements essentially identical to those of the NRC and do not have the flexibility to adopt more stringent requirements. *See also* response to comment D29.

II. Discussion

The NRC has determined that a new part for Title 10 of the *Code of Federal Regulations* (10 CFR) should be established for the security requirements for use and transportation of category 1 and category 2 quantities of radioactive material. Separate safety and physical protection requirements have already been established for special nuclear material in 10 CFR part 73. The establishment of a new part for security-related requirements for byproduct material would be more effective and efficient compared to interspersing the requirements with safety requirements or placing them with the part 73 security requirements for special nuclear material. A new part specifically directed to byproduct material licensees should make applicable requirements easier for both licensees and other stakeholders to locate and understand.

This discussion section has been divided into four subsections to better present information on the final rule. Each section presents information on a different aspect of the final rule. Section A provides information that is generally applicable to all aspects of this

rulemaking. Section B provides information on background investigations and the access authorization program. Section C provides information on the physical protection of the materials during use. Lastly, Section D provides information on transportation security aspects.

A. General Applicability

1. What action is the NRC taking?

The NRC is amending its regulations to impose security requirements for the use and transportation of category 1 and category 2 quantities of radioactive material. The requirements establish the objectives and minimum requirements that licensees must meet to protect against theft or diversion of this material. These requirements are intended to increase the protection of the public against the unauthorized use of category 1 or category 2 quantities of radioactive material by reducing the risk of the theft or diversion of the material. The NRC is also amending the regulations to impose security requirements for the transportation of small quantities (100 grams or less) of irradiated fuel.

2. Why do the requirements need to be revised?

Prior to September 11, 2001, the NRC requirements focused on safety and preventing inadvertent or accidental exposure of both workers and the public to these materials. These requirements also provided security for the material. The events of September 11, 2001, made the NRC take a broader look at its requirements and reevaluate what a terrorist might do to obtain these materials. From this effort, the NRC identified several areas where additional requirements were necessary to improve security. The security requirements need to be placed in the regulations so that they are generally applicable to all licensees. Publication of the proposed rule also provided an opportunity for all stakeholders to comment on the proposed requirements.

3. Why doesn't the NRC just keep the orders in effect?

The orders issued by the NRC could stay in place indefinitely. However, the regulations would not reflect current Commission policy or requirements. Imposing long-term requirements through orders has not traditionally been the agency's preferred method of regulation. Orders, unlike rules, do not apply prospectively to applicants for new licenses. The NRC would have to periodically issue new orders to cover new and amended licenses, and perhaps reissue orders periodically to existing licensees if requirements or administrative practices change. In order to make the requirements generally applicable to all present and future licensees, the security-related requirements need to be placed in the regulations.

The NRC is now formally revising its security requirements. The orders will remain in place for NRC licensees until the final rule is implemented (1 year after publication of the final rule). Once the final rule is implemented, the NRC will rescind the orders that were issued to its licensees. For Agreement State licensees that received an NRC order, the order will remain in place until the effective date of compatible requirements issued by the Agreement States. Each Agreement State will follow its own process for issuing these requirements. Once the State has issued its requirements and they become effective, the NRC will rescind the order.

4. Whom would this action affect?

These requirements will apply to NRC and Agreement State licensees that possess an aggregated category 1 or category 2 quantity of radioactive material or that transport irradiated reactor fuel less than 100 grams net weight. This includes a wide range of licensees, including pool-type irradiator licensees; manufacturer and distributor licensees; medical facilities with gamma knife devices; self-shielded irradiator licensees (including blood irradiators); teletherapy unit licensees; radiographers; well loggers; broad scope users; radioisotope thermoelectric generator licensees; and licensees that ship or prepare for shipment category 1 or category 2 quantities of radioactive material. Nearly 1,400 licensees are implementing the various orders and are the entities that will be primarily impacted by this final rule. In addition, some fuel cycle and reactor licensees that possess sources at these levels may be impacted. Some decommissioning reactor licensees may also be impacted. Most licensees whose activities are covered under the physical protection requirements of 10 CFR part 73 are exempt from the requirements of 10 CFR part 37. For example, a reactor licensed under part 50 that also possesses a radiography source under an NRC license does not need to implement the part 37 provisions if the source is protected under the reactor security program required by part 73. Licensees that possess an aggregated quantity of radioactive waste that equals or exceeds the category 2 threshold will need to meet some requirements, but would not need to meet most of the program elements in part 37.

Aggregated quantity refers to the total quantity of radioactive material, calculated by use of the sum of fractions method discussed in question 7, that can be accessed by defeating a single physical barrier.

5. What are Category 1 and Category 2 quantities of radioactive material?

Category 1 quantities of radioactive material have been called radioactive material in quantities of concern (RAMQC). Category 1 and category 2 quantities of radioactive material have been called risk-significant radioactive material and refer specifically to 16 radioactive materials (14 single radionuclides and 2 combinations). These materials are: Americium-241; americium-241/beryllium; californium-252; curium-244; cobalt-60; cesium-137; gadolinium-153; iridium-192; plutonium-238; plutonium-239/beryllium; promethium-147; radium-226; selenium-75; strontium-90 (yttrium-90); thulium-170; and ytterbium-169. Irradiated fuel and mixed oxide fuel are not included even though they may contain category 1 or category 2 quantities of radioactive material; these materials are covered by other regulations. The thresholds for category 1 and category 2 quantities of radioactive material are provided in the following table. Terabecquerels is the official unit to be used for determining whether a radioactive material is a category 1 or category 2 quantity. Because many licensees use curies in their activities instead of Becquerels, the table provides the curie value at three significant figures for convenience.

Radioactive material	Category 1 threshold		Category 2 Threshold	
	Terabecquerels (TBq)	Curies (Ci)	Terabecquerels (TBq)	Curies (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Beryllium	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40

Radioactive material	Category 1 threshold		Category 2 Threshold	
	Terabecquerels (TBq)	Curies (Ci)	Terabecquerels (TBq)	Curies (Ci)
Curium-244	50	1,350	0.5	13.5
Cobalt-60	30	810	0.3	8.10
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1000	27,000	10.0	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Beryllium	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2.0	54.0
Strontium-90 (Yttrium-90)	1,000	27,000	10.0	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0
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These materials and thresholds are based on the IAEA Code of Conduct. The IAEA published these results in a document titled ''Code of Conduct on the Safety and Security of Radioactive Sources.'' A link to this document can be found on the NRC's Web site at *http://www.nrc.gov/security/byproduct/enhanced-security.html.* The NRC and the international community, led by the IAEA, revised the IAEA Code of Conduct in 2003, to establish common international guidance for safety and security measures for radioactive sources. In a separate effort, the U.S. Department of Energy (DOE) and the NRC reviewed the chemical, physical, and radiological characteristics of each radioactive material that is licensed in the United States, for its attractiveness to a terrorist. This effort identified 16 radioactive materials that could pose a serious threat to people and the environment if used malevolently. This effort further identified the different quantities or ''thresholds'' of materials that could be useful to a terrorist. The results of the DOE/NRC effort closely matched the Code of Conduct Category 2 quantities. The NRC adopted the IAEA Code of Conduct Category 1 and Category 2 threshold quantities to provide consistency between domestic and international efforts for security of radioactive materials that are deemed to be attractive targets for malevolent use.

IAEA Safety Series RS–G–1.9, Categorization of Radioactive Sources, provides the underlying methodology for the development of the Code of Conduct thresholds. Safety Series RS–G–1.9 provides a risk-based ranking of radioactive sources in five categories in terms of their potential to cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal. The categorization system uses the 'D' values as normalizing factors. The 'D' value is the radionuclide specific activity of a source that, if not under control, could cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal of the source material. Safety Series RS–G–1.9 is available on the IAEA's Web site at: *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf.*

6. Why are the requirements limited to these 16 radionuclides?

The Radiation Source Protection and Security Task Force, an interagency task force established by the EPAct, concluded in its 2006 report to Congress and the President (ADAMS Accession No. ML062190349) that the appropriate radioactive sources were being protected. The Task Force also concluded that the IAEA Code of Conduct serves as an appropriate framework for considering which sources warrant additional protection. For its 2010, report to Congress and the President (ADAMS Accession No. ML102230141), the Task Force conducted a reevaluation of the radionuclides that warrant additional security and protection. The Task Force found ''that the Category 1 and 2 quantities remain valid for sealed and unsealed sources as the list and threshold levels of radionuclides that could result in a significant RED or RDD event and therefore warrant enhanced security and protection.'' The Task Force identified seven additional radionuclides that may be of concern when aggregated, but the Task Force did not recommend at this time that these additional radionuclides should receive enhanced protection. If in the future the Task Force revises its view and determines that additional security is necessary for these materials, the NRC would consider requiring additional security for these materials. The Task Force periodically reevaluates the list of radionuclides that warrant additional security and protection. If the radionuclides and/or thresholds change in the future, any changes would be addressed in a future rulemaking.

7. What is the sum of fractions methodology or unity rule?

The sum of fractions methodology, also known as the unity rule, is used to determine if a licensee is required to implement 10 CFR part 37 requirements. A licensee may need to implement the requirements in 10 CFR part 37 even if it does not possess any single source or single radionuclide in excess of the category 2 thresholds. For combinations of materials (to include sealed sources, unsealed sources, and bulk or loose material) and radionuclides, a licensee must include multiple items (including bulk material) of the same radionuclide and multiple items (including bulk material) of different radionuclides to determine if the requirements apply. For the purposes of this calculation, licensees are required to consider all of the aggregated radioactive material from the list of applicable radionuclides at any location where the material can be accessed by breaching a single barrier. The following formula for the unity rule is used to determine if a licensee is required to implement the part 37 requirements: [(Total amount of radionuclide A) ÷ (category 2 threshold of radionuclide A)] + [(total amount of radionuclide B) ÷ (category 2 threshold of radionuclide B)] + etc.....≥ 1. If the sum is greater than or equal to 1, the licensee has at least a category 2 quantity of radioactive material, and the 10 CFR part 37 requirements apply.

8. Does the NRC plan to issue guidance on these requirements?

Yes, the NRC plans to issue guidance on the security requirements for category 1 and category 2 quantities of radioactive materials. The draft guidance was issued for public comment (75 FR 40756; July 14, 2010) during the comment period on the proposed rule. The NRC is issuing new guidance for the implementation of the requirements of 10 CFR part 37. The guidance document is NUREG–2155, Implementation Guidance for 10 CFR part 37, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material'' (ADAMS Accession No. ML13053A061). This guidance and public comments are available as stated in the **ADDRESSES** section of this document.

9. Will all of the information considered to be safeguards information under the orders now be made public?

No. The orders issued to some licensees contained detailed security information that could be useful to an adversary. To increase public awareness and participation, the NRC identified the primary security concepts behind each security measure and included these concepts in the rule to allow discussion of the security measures in a public forum. But the specific measures that a licensee puts in place may be considered SGI–M. The final rule on safeguards information became effective on February 23, 2009 (73 FR 63546; October 24, 2008), and established as SGI–M certain physical protection information related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source material, byproduct material, or special nuclear material in greater than category 2 quantities; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities. Physical protection information for other facilities that fall under the requirements of 10 CFR part 37 is considered physical protection information under 10 CFR 2.390(d)(1). Licensees are also required to protect the security plan and implementing information and the list of individuals that have unescorted access from unauthorized disclosure. The rule provisions that address SGI–M or include references to the SGI–M requirements in part 73 are reserved for the NRC and are considered compatibility category NRC.

10. What is the authority for this final rule?

As noted in the background discussion, the NRC issued some orders under its authority to protect the common defense and security and some orders under its authority to protect the public health and safety. With respect to whether the following regulations are being issued under ''public health and safety'' or ''common defense and security,'' it should be recognized that almost all regulations relating to the security of materials serve both purposes to some degree. For example, securing radioactive materials with multiple barriers protects the public health and safety by preventing the unknowing theft of radioactive materials—such as someone stealing a vehicle with material stored in the vehicle, but whose target is the vehicle—which could result in the unintentional exposure of members of the public to the material. The barriers also protect the common defense and security by preventing the theft of the radioactive material by potential terrorists or others targeting the specific material intending to use it to affect the common defense and security by exposing members of the public to the material. However, the designation of the authority being used for these regulations does have significance in determining whether Agreement States or the NRC will be responsible for overseeing the implementation of these requirements for Agreement State licensees.

Although section 274(b) of the AEA allows the NRC to relinquish its regulatory authority to Agreement States for certain radioactive materials and activities, section 274(m) of the AEA prevents such agreements from affecting the authority of the Commission to take regulatory action to protect the common defense and security. Thus, as evidenced by orders issued to Agreement State licensees after the events of September 11, 2001, the NRC has the ability to take necessary steps to address particular common defense and security needs. If these regulations were to be issued under the NRC's common defense and security authority, only the NRC would have the authority to impose these requirements on Agreement State licensees and the NRC would be responsible for inspection and enforcement of these requirements for Agreement State licensees.

When regulations such as these complement both the NRC's public health and safety and common defense and security missions, the operative question is whether NRC oversight is necessary to fulfill the common defense and security aspects of the regulations. The NRC believes that the Agreement States can consistently and adequately implement the physical protection requirements on a nationwide basis, and as such, there will be no need for independent NRC action to protect the common defense and security. As always, the NRC retains the authority under section 274(m) of the AEA to take any necessary actions for protection of the common defense and security should individual licensees or Agreement State programs develop issues requiring immediate action. As long as all Agreement States continue to implement compatible and adequate security requirements, there appears to be no benefit to the public health and safety, or common defense and security, that would justify removing oversight of these requirements from an established regulatory program overseeing Agreement State licensees. Implementing these regulations under the NRC's public health and safety authority avoids potential complications with licensees being subject to dual regulatory authority for a single license. Thus, the NRC is issuing these regulations under its public health and safety authority, and these requirements are applicable to Agreement State licensees through the Agreement State Program.

11. When would the rule be effective?

The final rule is effective 60 days after publication in the **Federal Register;** however, licensees do not need to comply with the rule until 1 year after publication. This provides time for licensees to put in place the necessary programs, develop procedures, and conduct training on the new requirements. While most of the provisions are similar to those contained in the orders, there are differences. The Agreement States will be required to issue compatible requirements within 3 years of the publication date of the final rule instead of 3 years from the effective date of the rule. Licensees in an Agreement State will continue to operate under the orders or other legally binding requirements until the Agreement State issues compatible requirements and these requirements take effect. The provisions put in place for the inspection of licensees in Agreement States that received the orders issued under common defense and security will remain in place until the Agreement State implements the requirements. For those Agreement States that enter into 274i Agreements, the State can continue inspections

under the Agreement. For those Agreement States that did not enter into 274i Agreements, the NRC will continue to conduct the inspections until the new Agreement State requirements become effective. The NRC will rescind the orders as the regulatory requirements become effective.

12. How does the NRC ensure licensees are following these rules?

The NRC and Agreement States conduct inspections to ensure that licensees are following the requirements. The NRC and Agreement State inspectors will receive training and follow inspection procedures on how to ascertain whether licensees are meeting security requirements. Potential violations that are identified will be processed in accordance with the NRC Enforcement Policy, and depending on the severity of a violation, licensees could be subject to civil or criminal penalties. Additionally, the NRC has developed enforcement guidance to ensure consistency in the enforcement process. Agreement State licensees are subject to the State's enforcement process. Those Agreement State licensees that were issued NRC orders under common defense and security would remain subject to the NRC's enforcement process, until the Agreement State adopts the regulations with its own legally binding requirements.

B. Background Investigations and Access Authorization Program

1. Who is required to have an access authorization program?

Any licensee that possesses category 1 or category 2 quantities of radioactive materials at a facility needs to determine whether it needs to have an access authorization program. Only those licensees that permit unescorted access to an aggregated category 1 or category 2 quantity of radioactive material are required to establish and implement an access authorization program. If the material can be accessed by the breach of a single physical barrier, the licensee needs to implement an access authorization program. In addition, any applicant for a license or license amendment to possess category 1 or category 2 quantities of radioactive material at a facility is required to establish an access authorization program before obtaining the radioactive material, if it will be aggregating the material at or above the category 2 threshold.

2. What is the objective of the access authorization program?

The main objective of the access authorization program is to ensure that individuals who have unescorted access to category 1 or category 2 quantities of radioactive material are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or common defense and security.

3. Who is subject to the licensee's access authorization program?

Section 652 of the EPAct authorizes the Commission to require fingerprinting of any individual who is permitted unescorted access to ''any radioactive material that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.'' The Commission has determined that the threshold that warrants fingerprinting and background checks is category 2. The Commission directed that any licensee implementing the Increased Control Orders should also have a fingerprinting and an FBI criminal records check for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. Because only licensees that had aggregated quantities at or above the category 2 threshold implemented the orders, these are the licensees that need to have an access authorization program, *i.e.,* any licensee that has an aggregated quantity of radioactive material at or above the category 2 threshold. Therefore, individuals subject to a licensee's access authorization program include anyone permitted to have unescorted access to category 1 or category 2 quantities of radioactive material. Unescorted access is defined as solitary access to category 1 or category 2 quantities of radioactive material or the devices that contain the material. The reviewing official is also included in the program to ensure that this individual is subjected to the same background check and degree of trustworthiness and reliability.

The access authorization program may also include individuals that have access to SGI–M, such as vehicle drivers and accompanying individuals for road shipments of category 1 quantities of radioactive material, movement control center personnel for shipments of category 1 quantities of radioactive material, and any individual whose assigned duties provide access to shipment information on category 1 quantities of radioactive material. Licensees may have a separate program for access to SGI or may include the program with the part 37 program for unescorted access to the material.

Those individuals who have unescorted access to certain quantities of byproduct material could pose a threat to the public health and safety or the common defense and security because they could divert or steal risk-significant radioactive material, or could aid others in the commission of such acts. The Radiation Source Protection and Security Task Force encouraged the NRC to require fingerprinting and Federal criminal history checks of any individual with access to category 1 or category 2 quantities of radioactive material.

Certain categories of individuals are relieved from the background investigation aspect of the access authorization program (*see* Section II, question B20 and B21). Licensees do have the option to escort an individual and not make a trustworthiness and reliability determination. The escorts need to be approved for unescorted access.

4. What are the key access authorization program requirements?

The key components of an access authorization program are the reviewing official, a background investigation, use of procedures, and the individual's right to correct and complete the information on which the decision to grant unescorted access is based. Each of these areas is discussed in more detail in the following questions and answers.

5. What is the role of the reviewing official?

The reviewing official is the individual that makes the trustworthiness and reliability determinations for the licensee; the reviewing official determines who can be allowed unescorted access authorization. Note that the Increased Control Fingerprinting Orders referred to a trustworthiness and reliability official (or T&R official) as the individual who made determinations on a subject individual's trustworthiness and reliability. Unlike the reviewing official, the T&R official did not have to be fingerprinted. Under this rule, fingerprints of the reviewing official(s) need to be taken by either a law enforcement agency, a Federal or State agency that provides fingerprinting services to the public, or a commercial fingerprinting service authorized by a State to take fingerprints and then be submitted to the NRC. This ensures the identification of the individual submitting the fingerprints. Without this requirement the reviewing official could

submit the fingerprints of another individual that is known not to have a criminal history or known terrorist ties. Reviewing officials must be permitted either access to safeguards information or unescorted access to category 1 or category 2 quantities of radioactive material because section 149 of the AEA only authorizes the collection of fingerprints for the purposes of unescorted access to radioactive material or access to safeguards information. After the licensee has completed the background investigation for the reviewing official and determined that the individual is trustworthy and reliable, the licensee must provide under oath and affirmation, a certification that the reviewing official is deemed trustworthy and reliable. For certain licensees, the NRC may have approved reviewing officials, either under the October 17, 2006, orders (EA–06–248, EA–06–250, and EA–06–249), under the August 21, 2006, SGI–M Orders, or under other regulatory requirements. In those cases, the reviewing official may continue to act in that capacity. If the reviewing (or T&R) official has not had an FBI criminal records history check, he or she needs to be fingerprinted and undergo a background investigation and be named by the licensee before making additional trustworthiness and reliability determinations. If the individual falls under one of the categories of individuals granted relief from the background investigation, the individual can be determined to be trustworthy and reliable without going through a full background investigation. The NRC believes that it is important that the individual who is making the final determination on whether an individual is trustworthy and reliable be trustworthy and reliable themselves and have undergone the same background investigation as individuals who would be granted unescorted access, including fingerprinting and the FBI criminal records check. If the reviewing official is not fingerprinted, a gap could be created in the security program that could potentially be exploited. The reviewing official could have a criminal history or terrorist ties and allow other individuals with a criminal history or terrorist ties to have unescorted access to radioactive material in quantities of concern. This addresses the good faith presumption.

6. What is informed consent?

Informed consent is the authorization provided by an individual that allows a background investigation to be conducted to determine whether the individual is trustworthy and reliable. The signed consent includes authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. An individual can withdraw his or her consent at any time. After the withdrawal, the licensee may not initiate any elements of the background investigation that were not in process at the time of the withdrawal of consent. The licensee is required to inform the individual that withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

Licensees do not need to obtain signed consent from individuals that have already undergone a background investigation that included fingerprinting and an FBI criminal history records check, been determined to be trustworthy and reliable, and permitted unescorted access to category 1 or category 2 quantities of radioactive material under the NRC orders or the legally binding requirements issued by the Agreement States. A signed consent is needed for any reinvestigation.

7. What is a personal history disclosure?

The personal history disclosure is the personal history required to be provided by the individual seeking unescorted access to category 1 or category 2 quantities of radioactive material. The information includes items such as employment history, education, and any arrest record. This information provides the reviewing official with a starting point for the background investigation. Failure to provide the information or falsification of any information could be grounds for denial of the individual's request for unescorted access authorization or termination of access if the individual already has access. If the individual provides false information, it could be an indication that he or she is not trustworthy or reliable.

8. What are the components of a background investigation?

A background investigation includes several components: Fingerprinting and an FBI identification and criminal history records check; verification of true identity; employment history verification; verification of education; and character and reputation determination.

It is the licensee's responsibility to make a trustworthiness and reliability determination of an employee, contractor, or other individual who will be granted unescorted access to category 1 or category 2 quantities of radioactive material or a device containing such radioactive material. It is expected that licensees will use their best efforts to obtain the information required to conduct a background investigation to determine an individual's trustworthiness and reliability. Information previously obtained during the hiring process may be used to support a licensee's determination of an individual's trustworthiness and reliability without having to reverify that information. There is no particular piece of information that would automatically disqualify an individual from access. The intent is that the information is considered as a whole in determining if an individual is both trustworthy and reliable.

Fingerprinting an individual for an FBI criminal history records check is an important element of the background investigation. It can provide comprehensive information regarding an individual's recorded criminal activities within the United States and its territories and the individual's known affiliations with violent gangs or terrorist organizations.

Verification of true identity is necessary to make sure that the individual is who he or she claims to be and that the documentation matches. This check is important to make sure that someone is not posing as someone else.

Employment history, education verification, character and reputation determination; and obtaining independent information are necessary to ensure that the individual is who they claim to be, that the individual has not made false claims, has a good reputation, and conducts his or herself in a trustworthy and reliable manner.

The background investigation is a tool to determine whether individuals are trustworthy and reliable and could be permitted unescorted access to category 1 or category 2 quantities of radioactive material. It is essential to ensure that individuals seeking unescorted access to radioactive material are dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or common defense and security.

Nothing in the regulations prevents a licensee from including other elements in its background investigation. Although the NRC did not include the credit history check as a required element of the background investigation, a credit history check can provide supplemental information that could be useful to licensees, particularly in the situation where it is difficult to

make a trustworthiness and reliability determination. Information from a credit history check could provide additional information that would be useful in making that final decision. To the extent that a licensee decides to use a credit history check as a measure beyond the regulatory minimum required for the access authorization program, the NRC acknowledges the merit of such use.

9. Where does a licensee submit the fingerprints for processing?

Under the EPAct, licensees are required to submit the fingerprints to the NRC, which forwards the fingerprints to the FBI for processing. If an individual comes under one of the categories for relief specified in 10 CFR 37.29, the licensee does not need to submit the individual's fingerprints to the NRC.

10. What should a licensee do if an individual or entity contacted as part of a background investigation refuses to respond?

If a previous employer, educational institution, or any other entity fails to provide information or indicates an inability or unwillingness to provide information in a timely manner, the licensee is required to document the refusal, unwillingness, or inability to respond in the record of investigation. The licensee then needs to attempt to obtain confirmation from at least one alternate source that has not been previously used.

11. Does an individual have the right to correct his or her criminal history records?

Yes, an individual has the right to correct his or her criminal history records before any final adverse determination is made. If the individual believes that his or her criminal history records are incorrect or incomplete in any respect, he or she can initiate challenge procedures. These procedures include direct application by the individual challenging the criminal history records to the law enforcement agency that contributed the questioned information. Before an adverse determination on a request for unescorted access, individuals have the right to provide additional information.

12. Is a licensee required to have procedures for implementing the access authorization program?

Yes, licensees are required to develop, implement, and maintain written procedures for implementing the access authorization program. At a minimum, procedures need to address notification of individuals denied unescorted access authorization, including provisions for review of the denial.

13. What information should the reviewing official use to determine that an individual is trustworthy and reliable?

The reviewing official uses all of the information gathered during the background investigation, including the information received from the FBI, in making a determination that an individual is trustworthy and reliable. The reviewing official may not determine that an individual is trustworthy and reliable and grant unescorted access until the information obtained for the background investigation has been evaluated. The reviewing official may deny unescorted access to any individual based on any information obtained at any time during the background investigation. However, as required by section 149.c(2)(c) of the AEA, the licensee may not base a final determination to deny an individual unescorted access to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving: (1) An arrest more than 1 year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge or an acquittal. If there is no record on the disposition of the case, it may be that information on a dismissal or acquittal was not recorded.

14. How frequently is a reinvestigation required?

A reinvestigation is required every 10 years to help maintain the integrity of the access authorization program. This is necessary because an individual's situation may change over time in a manner that can adversely affect his or her trustworthiness and reliability. The reinvestigation includes only the fingerprinting and the FBI criminal history check.

15. Are licensees required to protect information obtained during a background investigation?

Yes, licensees are required to protect the information obtained during a background investigation. The licensee is required to establish and maintain a system of files and procedures for protection of the information from unauthorized disclosure. Licensees are only permitted to disclose the information to the subject individual, the individual's representative, those who have a need-to-know the information to perform their assigned duties to grant or deny unescorted access to category 1 or category 2 quantities of material or safeguards information, or an authorized representative of the NRC.

16. Can a licensee transfer personal information obtained during an investigation to another licensee?

Yes, a licensee can transfer background information on an individual to another licensee if the individual makes a written request to the licensee to transfer the information contained in his or her file.

17. If I receive background investigation information from another licensee, can I rely on that information?

Yes, a licensee can rely on the background investigation information that is transferred from another licensee. However, a licensee is required to verify information such as name, date of birth, social security number, gender, and other physical characteristics to ensure that the individual is the person whose file has been transferred. The licensee can also choose to verify other information that is transferred or to escort the individual and not grant him or her unescorted access.

18. What records are required to be maintained?

Licensees are required to retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for 3 years after the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. Licensees are also required to retain the written confirmation received from entities concerning a security clearance or favorably adjudicated criminal history records check and any written verifications received from service providers. A licensee is not required to retain the actual fingerprints. The licensee must keep the determination basis and the list of individuals permitted unescorted access.

19. How does a licensee determine the effectiveness of the access authorization control program?

Licensees are required to review their program annually to confirm compliance with the requirements. The review evaluates all program performance objectives and requirements, documents any findings and corrective actions, and is conducted annually. Any records need to be maintained for 3 years.

20. Are individuals transporting radioactive material subject to the background investigation requirements?

As part of this rulemaking, the NRC considered what level of responsibility to place on its licensees regarding fingerprinting and criminal history records checks for persons involved in the transportation of category 1 and category 2 quantities of radioactive material. Licensees covered by the fingerprinting and criminal history records check requirements of this final rule may decide to transfer radioactive material away from the site or may receive radioactive material from another entity.

Such transfers or receipts may occur either as part of a shipment to or from a domestic company or an international company. Individuals involved in the shipment, in particular those employed by carriers or other organizations handling shipments, may have unescorted access to the material during the shipment process. These persons may not be employees of the licensee and thus may not be under the licensee's direct control. Section 37.29(a) grants relief from the background investigation for those individuals who are commercial vehicle drivers for road shipments of category 2 quantities of radioactive material and package handlers at transportation facilities such as freight terminals and railroad yards. Individuals that have access to SGI–M, such as drivers for category 1 shipments and movement control personnel for category 1 shipments, must undergo fingerprinting and an FBI criminal history records check as required by 10 CFR 73.21.

21. Who would be relieved from the background investigation requirements?

Under section 149.b. of the AEA, the NRC may, by rule, relieve individuals from the fingerprinting, identification, and criminal history records check requirements if it finds that such action is ''consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.'' The NRC issued a final rule, 10 CFR 73.61, relieving certain individuals who are permitted unescorted access to radioactive materials from the fingerprinting, identification, and criminal history records checks required by section 149.a. of the AEA (72 FR 4945; February 2, 2007). The individuals relieved from fingerprinting, identification, and criminal history records checks under that rule include Federal, State, and local officials involved in security planning; Agreement State employees who conduct security inspections on behalf of the NRC pursuant to 274.i. of the AEA; and other government officials who may need unescorted access to radioactive materials or other property subject to regulation by the Commission as part of their oversight function. The categories of individuals relieved by the rule included the same individuals as those relieved in an earlier rulemaking from fingerprinting and criminal history records check requirements applicable to safeguards information (71 FR 33989; June 13, 2006).

Under this final rule, the Commission is using the same listing of categories of individuals with the following modifications. Emergency response personnel who are responding to an emergency are relieved from the requirements because it is impossible to predict when emergency access might be necessary. The need to provide an escort for those responding to an emergency could impede the response function. Employees of carriers that transport category 2 quantities of radioactive material and package handlers at transportation facilities are also relieved. These individuals would typically be outside the control of the licensee and the licensee would have no way of knowing or influencing who those individuals might be. The NRC will rely on the U.S. Department of Transportation (DOT) and the Transportation Security Administration (TSA) programs for background investigations of these personnel. While the background investigation may not be identical to those required under 10 CFR part 37, the NRC believes that the potential risk that a commercial driver or package handler might pose due to any difference in the background investigation is acceptably small.

Many of the individuals that are relieved from the background investigation requirements are considered trustworthy and reliable by virtue of their occupational status and have either already undergone a background investigation as a condition of their employment, or are subject to direct oversight by government authorities in their day-to-day job functions.

Certain persons, as part of the duties of their specific occupation, may be separately or previously subject to background investigations, either as a result of NRC requirements (such as under other requirements for access to SGI or SGI–M) or as a result of requirements of other agencies. These persons are not subject to separate background investigation requirements under this final rule; individuals who have undergone a background investigation, including fingerprinting, and been found acceptable for unescorted access under provisions of other such requirements, do not need to undergo another background investigation nor would a separate determination of their trustworthiness and reliability need to be made. Individuals that have undergone fingerprinting and an FBI criminal history records check under other agency programs do not need to be fingerprinted again, but would be subject to the other elements of the background investigation. These programs include the National Agency Check, Transportation Worker Identification Credentials (TWIC) under 49 CFR 1572, Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR 555, Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR 1572, and Customs and Border Patrol's Free and Secure Trade (FAST) Program. The individual must make available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee.

This rule does not authorize unescorted access to any radioactive materials or other property subject to regulation by the Commission. Rather, the rule makes clear that a licensee may permit unescorted access to certain categories of individuals otherwise qualified for access without performing a background investigation. Licensees still need to decide whether to grant or deny an individual unescorted access independently of this provision. Any required training needs to be conducted before allowing unescorted access.

C. Physical Protection During Use

1. Who is affected by the requirements?

Any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material is required to establish, implement, and maintain a security program meeting the requirements of 10 CFR part 37 of subpart C. (The NRC considers material to be ''aggregated'' if an adversary could gain access to a category 2 or greater quantity by breaching a single physical barrier.) In addition, any applicant for a license or license amendment to possess category 1 or category 2 quantities of radioactive material at a facility is

required to establish a security program before obtaining the radioactive material, if it will be aggregating the material at or above the category 2 threshold.

2. What is the objective of the security program and what are the key security program requirements?

The final rule requires affected licensees to establish, implement, and maintain a security program. The objective of the security program is to monitor, and without delay detect, assess, and respond to any actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive materials. A licensee's security program needs to include a written security plan, implementing procedures, training, use of security zones, protection of information, coordination with the LLEA, testing and maintenance of security-related equipment, security measures, and a program review. Each of these areas is discussed in more detail in the following questions and answers.

3. What should a licensee's security plan address?

The purpose of a security plan is to establish, in writing, the licensee's overall security strategy to ensure that all of the required security measures work effectively and in an integrated way for all facilities and operations where aggregated quantities of category 1 or category 2 quantities of radioactive material will be used or stored. The plan should, among other things, include a description of the measures and strategies to implement the security requirements and identify the security resources being used to meet the requirements.

A licensee can revise its security plan to address changing circumstances. Any changes to the security plan, as well as the original plan, must be approved by the individual with overall responsibility for the security program. The security plan must be retained for 3 years after it is no longer needed. The licensee must retain any superseded portions of the security plan for 3 years.

Security plans are important for the implementation of a performance-based regulation. An adequate plan requires a licensee to analyze the particular security needs of its individual facilities and to explain how it will implement its chosen security measures to ensure that they work together to meet the applicable performance objectives.

4. Is a licensee required to have security procedures?

Yes, licensees are required to develop and maintain written implementing procedures that document how the security requirements and the security plan will be met. These procedures must be designed to meet the individualized security needs of each location where an aggregated category 1 or category 2 quantity of radioactive material is used or stored. Procedures need to be approved, in writing, by the individual with overall responsibility for the security program. Licensees are required to keep a copy of the current procedures as a record for 3 years. Superseded portions of the procedures are retained for 3 years. Licensees should not submit procedures to the NRC as part of the license application.

5. What training is required?

As part of its physical protection program, each licensee is required to conduct training on the security plan to ensure that those individuals responsible for implementation of the plan possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The extent of the training needs to be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material. Individuals need to be instructed in the licensee's security program and implementing procedures, their responsibilities, and the appropriate response to alarms. Licensees with dedicated security staff are encouraged to train their security personnel in the timely notification of affected LLEAs during emergencies.

An individual subject to the training requirements of 10 CFR 37.43(c) needs to complete the training before being allowed unescorted access to category 1 or category 2 quantities of radioactive material. The licensee needs to provide refresher training annually or when significant changes have been made to the security program. The refresher training addresses any significant changes; reports on relevant security issues, problems, or lessons learned; relevant results from NRC inspections; and relevant results from the licensee's program review and the testing and maintenance program. Training records must be maintained for 3 years and need to include training topics, training dates, and the list of personnel that attended the training.

Training is essential if the licensee is to be adequately prepared for an effective and coordinated response to any effort to steal or divert category 1 or category 2 quantities of radioactive material. Adequate training is indispensable for an appropriate licensee response to an unauthorized intrusion.

6. Are licensees required to protect information concerning their security program?

Yes. To prevent unauthorized disclosure, licensees are required to limit access to their security plans, implementing procedures, and the list of individuals that have unescorted access to the material. These efforts include measures to allow access to these documents only to those individuals who have a need to know the information to perform their duties and have been determined to be trustworthy and reliable based on the background investigation requirements set forth in 10 CFR 37.25(a)(2) through (a)(7). Licensees are required to store security information in a manner to prevent unauthorized removal, such as storage in a locked office or desk drawer.

To ensure that only trustworthy and reliable individuals with a need to know are allowed access to security plans and procedures, licensees need to develop, implement, and maintain written policies and procedures to control access to their security plan and security procedures. The licensee's information protection policies and procedures need to ensure the proper handling and protection of security plans and implementing procedures against unauthorized disclosure. Licensees are required to retain copies of the policies and procedures.

Licensees that have SGI or SGI–M would remain subject to the more stringent information protection requirements of 10 CFR 73.21, including fingerprinting and an FBI criminal records check.

7. What is the purpose of a security zone?

A security zone is any area established by a licensee to provide physical protection for category 1 or category 2 quantities of radioactive material. All category 1 and category 2 quantities of radioactive material need to be used and stored within a security zone.

The purpose of security zones is to isolate and control access to the material to protect it more effectively and deter theft or diversion by providing, among other things, more time for licensees and LLEAs to respond. Isolation measures protect category 1 or category 2 quantities of radioactive material by

allowing access to security zones only through established access control points. Access control measures allow only approved individuals to have unescorted access to the security zone, and ensure that other individuals with a need for access are escorted by approved individuals. A security zone effectively defines where the licensee will apply these isolation and access control measures.

To limit unescorted access to only approved individuals, licensees could isolate the radioactive materials using continuous physical barriers that allow access to the security zone only through established access control points; or licensees could exercise direct control of the security zone by approved individuals at all times.

Security zones may be permanent or temporary. Temporary security zones need to be established to meet transitory or intermittent operating requirements such as periods of maintenance, source delivery, and source replacement. A licensee could meet the requirements for a security zone at some temporary job sites (such as those involving onsite operations lasting less than a day) simply by keeping the area under ''direct supervision'' by authorized personnel. Similarly, when work is being done inside a temporary zone, a licensee could meet the requirements for controlling unescorted access by having the material, persons, and area within the zone under direct control of approved individuals at all times.

Because the purpose of security zones is different from the radiation safety purposes of the restricted areas and controlled areas defined in 10 CFR part 20, the security zone does not have to be the same as either of these areas. Because measures to control access are required for both radiation protection and security, however, a licensee does have the flexibility to use an area required for radiation protection purposes to fulfill the required functions of a security zone. Thus, for a temporary well-logging operation within which the licensee is required by 10 CFR 39.71 to have a ''restricted area'' to ''maintain direct surveillance * * * to prevent unauthorized entry into a restricted area,'' a licensee could define a security zone with the same boundaries as this ''restricted area.'' Similarly, a radiographer could choose to define a security zone with the same boundaries as the ''high radiation area'' over which radiography licensees are required by 10 CFR 34.51 to ''maintain direct visual surveillance * * * to protect against unauthorized entry.''

Because materials licensee sites are differently configured and do not lend themselves to generically defined physical areas, the security zone concept permits significant flexibility for licensees to account for a range of site-specific concerns. It also provides regulators with a well-defined and enforceable requirement keyed to performance objectives of isolation and access control.

8. When are special additional measures for category 1 quantities of radioactive material required?

One provision of the final rule applies to category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange. Licensees are required to provide, at a minimum, an approved individual to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow the specified activities.

Due to the natural decay of their radioactivity, sources lose their effectiveness as they get older and have to be replaced or replenished periodically with new sources to maintain a device's expected performance. Tamper-indicating devices and other intrusion detection equipment typically must be disabled to permit the device to be opened without tripping alarms. The new sources are typically shipped by an offsite supplier, who also often performs removal and exchange or reinstallation. After replacement, the removed older sources must be prepared onsite for shipment back to the manufacturer or for storage and eventual disposal. These non-routine operations by non-licensee employees at the licensee's site, during a time when devices for detecting theft or diversion are disabled, call for additional measures to compensate for the temporary increase in vulnerability.

9. What is required to monitor and detect an unauthorized entry into a security zone?

A licensee is required to establish and maintain the capability to continuously monitor and detect all unauthorized entries into its security zone(s). Monitoring and detection are performed by either a monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility; electronic devices for intrusion detection alarms that would alert nearby facility personnel; monitoring by a video surveillance system; or direct visual surveillance by individuals.

A licensee also needs the capability to detect unauthorized removal of the radioactive material. For category 1 quantities of radioactive material, a licensee needs to immediately detect any attempted unauthorized removal through the use of electronic sensors linked to an alarm or continuous visual surveillance. For category 2 quantities of radioactive material, a licensee needs to verify the presence of the radioactive material through weekly physical checks, tamper indicating devices, actual usage of the material, or other means.

10. What are the requirements for personnel communications and data transmission?

Licensees are required to maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems for any personnel and automated or electronic systems used to support the site security systems. Licensees are required to have alternative capability for any system in the event of loss of the primary means of communication or data transmission and processing. The alternative means cannot be subject to the same failure mode as the primary systems.

11. What does a licensee need to do when it detects an intrusion into its security zone?

A licensee's response to an intrusion depends on the licensee's assessment of the purpose of the intrusion, but a response is required without delay. If the unauthorized access appeared to the licensee to be an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee needs to immediately notify and request an armed response from the appropriate LLEA. An immediate response by the licensee permits a more timely response from law enforcement, thereby, reducing the risk that the material could be used for malevolent purposes. Immediate notification also allows for early warning to other possible targets of a simultaneous attempt to divert material from multiple locations.

A licensee's decision to call the LLEA and the NRC depends not only on the licensee's assessment of the intent of the unauthorized access but also on whether the area where the breach occurred is an area the licensee had previously determined needed to be monitored in order to meet the NRC's physical protection requirements. Thus, a licensee's assessment and response to an intrusion alarm in the business office section of its facility could be entirely

different from its assessment and response to an intrusion alarm in a radioactive materials storage area.

12. Can a licensee use automated devices to assess an intrusion and alert an LLEA?

Depending on the security system, the layout of controlled areas, and the design capabilities of the sensors, automated devices or systems may be programmed to automatically summon LLEA assistance in response to an intrusion alarm.

13. What coordination is required with LLEA?

Licensees are required to coordinate, to the extent practicable, with the LLEA to discuss the LLEA response to threats to the licensee's use of Category 1 or 2 quantities of radioactive material. An LLEA is defined as a public or private organization that has been approved by a Federal, State, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported. In the event of an actual or attempted theft, sabotage, or diversion of radioactive material, an armed response is likely to be necessary. Adversaries could be well armed, and the small unarmed or lightly-armed private security guard service typically used at byproduct material licensee sites would not be an adequate substitute for an LLEA. However, the LLEA need not be a municipal or county police force. If a hospital or university campus police force is the nearest law enforcement agency to the licensee's operation capable of providing an armed response and making arrests, that police force would meet the definition of an LLEA.

Coordination activities include providing a description of the facility, radioactive materials, and security measures and notification that the licensee will request a timely and armed response to any actual or attempted theft, sabotage, or diversion of the licensee's radioactive materials. The licensee is required to document its coordination efforts. The documentation could include such items as the dates, times, and locations of meetings or phone calls and a list of licensee and LLEA staff present at the meetings. Licensees are required to coordinate with the LLEA at least every 12 months.

Coordination with an LLEA is essential in developing an effective and efficient physical protection program. Because certain situations may necessitate an armed response, a strategy that is consistent in scope and timing with realistic potential vulnerabilities of the subject radioactive material should be coordinated well in advance with the LLEA. Another purpose of coordination is to provide the responsible LLEA with an understanding of the potential consequences associated with unauthorized use of the radioactive material of concern, so that the LLEA can determine the appropriate priority of its response. The LLEA response is needed not only to interdict and disrupt an attempted theft or sabotage onsite, but also possibly for offsite coordination to protect public health and safety and to mitigate the potential consequences of unauthorized use of the radioactive material.

14. What if the LLEA declines to coordinate with a licensee?

The NRC recognizes that it cannot exercise authority over LLEAs, or any party over which a licensee has no control and the NRC has no legal jurisdiction. The NRC also recognizes that an LLEA may have good reasons for not engaging in coordination activities.

An LLEA's refusal to coordinate with a licensee does not by itself render a licensee's security plan inadequate. The NRC recognizes that in an actual emergency, State and local government officials will respond to protect the health and safety of the public. A licensee is required under 10 CFR 37.45(a)(2) to notify the appropriate NRC regional office within 3 business days if the LLEA has not responded to a request for coordination within 60 days of the coordination request, or if the LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities. The notification allows the NRC to contact the LLEA directly to ensure that the LLEA understands the importance of adequate coordination. In some cases, the NRC might contact the Department of Homeland Security (DHS) and request DHS assistance with the LLEA. If the LLEA refuses to coordinate beforehand, the licensee could still comply by making and documenting periodic good-faith efforts to elicit the LLEA's participation in planning for a timely and effective response.

15. What are the LLEA notification requirements for work at a temporary job site?

The final rule does not require any notification of or coordination with the LLEA for work at temporary jobsites.

16. What are the special requirements for mobile sources?

The rule requires licensees using mobile devices containing a category 1 or category 2 quantity of radioactive material to have two independent physical controls that form tangible barriers to prevent unauthorized removal of the device. For devices in or on a vehicle or trailer, a licensee is required to use a method to disable the vehicle or trailer when it is not under direct control and constant surveillance by the licensee. Licensees are not allowed to rely on the removal of an ignition key to meet this requirement. The rule does allow for the situation where a site's health and safety procedures prohibit the disabling of the ignition. In those instances, the licensee would not be required to disable the ignition. These provisions are in addition to the other requirements in subpart C.

Mobile devices, particularly portable ones, are likely to be more vulnerable to attempted theft or diversion because an adversary could more easily remove these devices before the licensee or LLEA has an opportunity to respond. The objective of this requirement is to delay intruders long enough for a timely licensee and LLEA response.

A mobile device is defined in the rule as a piece of equipment containing licensed radioactive material that is either: (1) Mounted on wheels or casters or otherwise equipped for moving without a need for disassembly or dismounting, or (2) designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location, such as an irradiator, but the definition includes radiography cameras, source changers, well logging equipment, and gauges or controllers. The definition could also include storage containers, lead pigs for holding sources during a source exchange, and onsite or offsite transportation packages, if they contained category 1 or category 2 quantities of radioactive material.

17. What maintenance and testing requirements apply to the security systems?

Consistent with 10 CFR 37.51, licensees are required to test intrusion alarms, physical barriers, and other systems used for securing and monitoring access to radioactive material, and these items need to be maintained in operable condition. Each intrusion alarm and associated communication system subject to the rule's requirements for monitoring, detection, and assessment needs to be inspected and tested for performance.

The licensee only needs to test the equipment that it relies on to meet the requirements of 10 CFR part 37. This would include any backup equipment or systems relied upon in the event of a primary system failure. If the licensee has additional equipment or systems that are not relied on to meet the rule requirements, the extra equipment and systems would not need to be tested and maintained.

The frequency for testing is based on the manufacturer's suggested timing. If the manufacturer does not suggest a frequency, the licensee must conduct the maintenance and testing at least annually. Licensees are required to maintain records of the maintenance and testing activities for 3 years.

18. What events does a licensee need to report to the NRC?

A licensee is required to report any actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material as soon as possible after initiating a response, which includes notification of the LLEA. The licensee is required to submit a written report to the NRC within 30 days after the initial notification. A licensee is also required to assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. If the licensee notifies the LLEA, it must also notify the NRC. The written 30-day report is not required for suspicious activity reports.

19. How does a licensee determine the effectiveness of the security program?

Licensees are required to review the security program annually to confirm compliance with the requirements. The review is to evaluate the security program content and implementation. The licensee is required to document any review findings and corrective actions, and the records need to be maintained for 3 years.

D. Transportation Security

1. What is the NRC authority to issue these transportation security requirements?

Sections 53, 81, and 161 of the AEA, as amended, provide the NRC with the statutory authority to issue these transportation security requirements. The NRC shares jurisdiction over the transport of radioactive material traveling over public roadways and by rail with DOT and DHS.

2. Why is this material being shipped?

In general, category 1 and category 2 quantities of radioactive material are shipped to medical institutions, companies that support medical and academic institutions, and companies that manufacture and distribute radioactive material for various industrial applications. As radioactive sources get older, radioactive decay decreases the sources' strength and the sources lose their effectiveness and have to be replaced or replenished with new sources. The older sources must be transported for disposal or back to the manufacturer.

3. What are the new transportation security requirements?

In general, the final rule includes requirements for pretransfer checks, preplanning and coordination of shipments, advance notification of shipments, control, monitoring, and communications during shipments, procedures, investigations of missing shipments, and reporting of missing material. Each of these areas is discussed in more detail in the following questions and answers.

These requirements apply to ground transport of category 1 or category 2 quantities of radioactive material shipped in a single package or in multiple packages in a single conveyance. The category 1 requirements also apply to shipments of irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation does rate in excess of 1 Gray (100 rad) per hour at a distance of 1 m (3.3 ft) from any accessible surface without intervening shielding. Note that a licensee is not responsible for complying with these requirements when a carrier aggregates radioactive material, during transport or storage incidental to transport, for two or more conveyances from separate licensees that individually do not exceed the limits. The shipping licensee is responsible for meeting the requirements unless the receiving licensee agrees in writing to arrange for the in-transit physical protection, including preplanning and coordination activities.

4. Is verification of the transferee's license necessary?

Yes, 10 CFR 37.71 requires any licensee transferring category 1 or category 2 quantities of radioactive material to a licensee of the NRC or an Agreement State to verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. Licensees that transfer material within the same organization do not need to verify the validity of the license (*i.e.,* for companies that have licenses in several States). The licensee should know if its licenses are valid. For transfers of category 1 quantities of radioactive material, the transferring licensee is also required to verify that the licensee is authorized to receive radioactive material at the address requested for delivery. These verifications are conducted with the license issuing authority, *i.e.,* the NRC or the appropriate Agreement State, or by using the license verification system. The license verification system is a new web-based system that NRC is developing that may be used to verify the validity of a license issued by either NRC or an Agreement State. The license verification system is currently scheduled to be operational by the effective date of the final rule. If it appears that the system will not be available in time to support the rule, the NRC will change the compliance date of this provision. Licensees should contact the appropriate NRC regional office to verify the validity of NRC licensees. Information on Agreement State contacts is provided on the NRC's Web page at *http://nrc-stp.ornl.gov/asdirectory.html.* If the license verification system is non-functional and the licensee cannot reach the license issuing authority, the rule does have a provision that allows the licensee to obtain certification from the requesting licensee. Licensees are required to document any method of verification, except for use of the license verification system. Licensees exporting material need to meet the requirements in 10 CFR part 110 for checking the documentation that the recipient has the necessary authorization under the laws and regulations of the importing country. These actions are intended to mitigate the risk that the material could be shipped to an unauthorized recipient.

5. Is preplanning and coordination of the shipments necessary?

Yes, 10 CFR 37.75(a) requires preplanning and coordination of shipment information for shipments of category 1 quantities of radioactive material. The shipping licensee (licensee sending the licensed material) is required to coordinate the departure and arrival times with the receiving licensee (licensee receiving the licensed material). This coordination reduces the risk that theft or diversion of the material would go unnoticed or unreported. The licensee also needs to preplan and coordinate the shipment information with the State(s) through

which the shipment will pass. As part of the coordination activities, the licensee is required to discuss the State's intention to provide law enforcement escorts for the shipments and identify safe havens. Under the rule, safe havens are sites at which security is present or from which the transport crew can notify and wait for the local law enforcement authorities in the event of an emergency. The licensee is responsible for identification of the safe havens. The purpose of the information sharing is to ensure minimal delay of the shipment.

For shipments of category 2 quantities of radioactive material, 10 CFR 37.75(b) requires that the shipping licensee verify the shipment no-later-than arrival time and the expected arrival time with the receiving licensee.

The definitions section of the final rule defines the term ''no-later-than arrival time'' as the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be more than 6 hours after the estimated arrival time for category 2 shipments. Verifying that the shipment arrives on time provides the licensee with the means to identify and immediately report an unusual occurrence that could lead to the theft or diversion of the material.

6. What does the NRC consider to be a safe haven?

A safe haven is a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the LLEA. The NRC expects safe havens to be identified and designated by the licensee.

Licensees should use the following criteria in identifying safe havens for shipments: Close proximity to the route, *i.e.,* readily available to the transport vehicle; security from local, State, or Federal assets is present or is accessible for timely response; the site is well lit, has adequate parking, and can be used for emergency repair or to wait for LLEA response on a 24-hour a day basis; and additional telephone facilities are available should the communications system of the transport vehicle not function properly. Possible safe haven sites include: Federal sites having significant security assets; secure company terminals; State weigh stations; truck stops with secure areas; and LLEA sites, including State police barracks.

7. Is the shipping licensee required to notify the receiving licensee if the no-later-than arrival time changes?

Yes. If the no-later-than arrival time will not be met, the shipping licensee must inform the receiving licensee of the new no-later-than arrival time for shipments of category 2 quantities of radioactive material. This provision allows licensees the ability to modify departure and arrival times due to unforeseen events.

8. Whom does the licensee notify when the shipment arrives?

The receiving licensee is required to notify the shipping licensee when the shipment of a category 2 quantity of radioactive material arrives at its destination. This requirement ensures positive communication between the shipper and recipient. Additionally, this requirement ensures that the shipper does not unnecessarily start an investigation because they are not sure that the shipment has arrived. The receiving licensee must notify the shipping licensee if the shipment has not arrived by the no-later-than arrival time. This notification is the trigger to initiate an investigation into where the package is located.

9. What does the term state mean in the requirements?

As used in the definitions section of the final rule, the term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. A list of the contact information for the governor's designees is published annually in the **Federal Register,** most recently on October 31, 2011 (76 FR 67229). An updated list is posted on the NRC's Web site at *http://nrc-stp.ornl.gov/special/designee.pdf.* Copies may also be obtained by contacting the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The NRC will work with the States to include a separate column.

10. What advance notifications are required?

The final rule requires advance written notifications for shipments containing category 1 quantities of radioactive material. The advance notifications are made to the NRC (or Agreement State which then would notify the NRC) and to any State through which a shipment is being transported. The State notification is made to the governor or the governor's designee. The NRC shares the information with some of its Federal partners.

Advance notification provides States and the NRC with knowledge of shipments so that in the event there is an increase in the risk of theft or diversion of the material, the regulator could delay or reroute the shipment to minimize the risk. This advance notification also allows States with escort requirements to engage in planning to support the shipment.

Advance notifications are not required for shipments of category 2 quantities of radioactive material, unless the shipment falls within the scope of 10 CFR 71.97(b).

11. What information should be included in an advance notification?

The final rule requires that the following information be included in an advance notification for a category 1 shipment of radioactive material, if available at the time of notification: (1) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment; (2) the license number of the shipper and receiver; (3) a description of the radioactive material contained in the shipment, including the radionuclides and quantity; (4) the point of origin of the shipment and the estimated time and date that shipment will commence; (5) the estimated time and date that the shipment is expected to enter each State along the route; (6) the estimated time and date of arrival of the shipment at the destination; and (7) the contact and telephone number for the point of contact. For the purpose of coordination only, the actual information in the advance notification would not be considered to be SGI–M. Any information that is not available at the time of the initial notification would be provided in a revised notification once the information becomes available.

12. What should a licensee do if the shipment schedule is revised or the shipment cancelled?

If the category 1 shipment schedule is revised or cancelled, the final rule requires the shipping licensee to notify the appropriate States and the NRC.

13. What should a licensee do if the shipment does not arrive by the no-later-than arrival time?

The final rule requires a licensee that has shipped category 2 quantities of radioactive material to initiate an investigation for any shipment that has not arrived at the receiving licensee's facility by the designated no-later-than

arrival time. The no-later-than arrival time is defined as the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be longer than 6 hours after the estimated arrival time for a shipment of category 2 quantities of radioactive material. A no-later-than arrival time was not included for category 1 shipments as the licensee is required to maintain continuous position monitoring and detect any unauthorized access to or removal of the material immediately. This would enable the shipping licensee of a category 1 shipment to know right away if the shipment was late or experiencing problems.

14. When must a licensee make notification that a shipment is lost or missing?

When a licensee determines that a shipment of a category 1 quantity of radioactive material is lost or missing, the rule requires the licensee to notify the LLEA in the area of the shipment's last confirmed location within 1 hour and then to notify the NRC's Operations Center. Notification to the NRC should be as prompt as possible, but not at the expense of causing delay or interference with the LLEA response to the event.

When a licensee determines that a shipment of category 2 quantities of radioactive material is lost or missing, the rule requires the licensee to notify the NRC's Operations Center within 4 hours of such determination. The licensee is also required to immediately notify the NRC's Operations Center if, after 24 hours from its determination that the shipment was lost or missing, the location of the material still cannot be determined.

Early notification provides for a more timely response from law enforcement, thereby reducing the risk of the misuse of the material.

15. Should licensees make notification that a lost or missing shipment has been found?

Yes, 10 CFR 37.81(e) and (f), for category 1 shipments and category 2 shipments, respectively, require the licensee to notify the NRC's Operations Center when a lost or missing shipment has been located. This notification is considered an update on the initial notification.

Without this notification, regulatory authorities and LLEA may waste resources continuing any search for the material.

16. What is a licensee required to do if there is an attempt to steal or divert a shipment?

For shipments of category 1 quantities of radioactive material, a licensee who discovers an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment, is required to notify the designated LLEA along the shipment route as soon as possible. After notifying the LLEA, the licensee is required to notify the NRC's Operations Center. The NRC's Operations Center will notify other affected States and the agency's Federal partners. For shipments of category 2 quantities of radioactive material, a licensee who discovers an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment, is required to notify the NRC's Operations Center as soon as possible. These security measures enhance the likelihood that the material will be successfully protected or recovered and allows for early warning of other possible victims of a simultaneous attempt to divert material from multiple locations.

17. What types of procedures are necessary for shipping category 1 quantities of radioactive material?

Licensees shipping category 1 quantities of radioactive material by road are required to ensure that normal and contingency procedures are developed to cover notifications; communication protocols; loss of communication; and response to an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment. The licensees are required to ensure that drivers, accompanying personnel, railroad personnel, and movement control center personnel have access to the normal and contingency procedures. Procedures provide reasonable assurance that these individuals are prepared for most situations and are able to act without delay to prevent the theft or diversion of shipments.

18. What should be included in the communication protocols?

The final rule requires that the communication protocols include a strategy for the use of authentication and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

19. What are the physical protection requirements for road shipments of category 1 quantities of radioactive material?

The final rule requires that any licensee that ships category 1 quantities of radioactive material by road either establish or use a carrier that has established, movement control centers that maintain position information from a location remote from the activity of the transport vehicle or trailer. The control centers are required to monitor shipments on a continuous and active monitoring basis (24 hours a day, 7 days a week), and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

The final rule requires that the licensee ensure that redundant communications are in place that would allow the transport to contact an escort vehicle (if used) and the movement control center at all times. The redundant communication must not be subject to the same interference factors as the primary communication method. The same interference factors mean any two systems that rely on the same hardware or software to transmit their signal (*e.g.,* cell tower or proprietary network).

Redundant communications provide drivers with the means to immediately report an unusual occurrence that could lead to the theft or diversion of the material. Early notification would permit a more timely response from law enforcement, thereby, reducing the risk of the misuse of the material.

The final rule also requires that the licensee ensure that category 1 shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. The movement control center is required to provide positive confirmation of the location, status, and control over the shipment and be prepared to implement preplanned procedures in response to deviations from the authorized route or to a notification of actual or attempted theft or diversion or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures include the identification of, and contact information for, the appropriate LLEA along the shipment route.

A telemetric position monitoring system is a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and

destination locations. The gathering of this information permits remote monitoring and reporting of the location of a transport vehicle or package. GPS and radiofrequency identification (RFID) are examples of telemetric position monitoring systems.

If the driving time period is greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the DOT Federal Motor Carrier Safety Administration, the final rule requires that the licensee ensure that an accompanying individual is provided for the entire shipment. The accompanying individual may be another driver. This security measure provides reasonable assurance that the material will be protected from theft or diversion when it is stationary, as well as in emergency situations where it becomes necessary for the driver to stop or leave the vehicle.

20. Is GPS required?

No, GPS is not required. For category 1 material, the NRC requires continuous and active monitoring for shipments. Continuous and active monitoring means that at any time while the shipment is enroute, the licensee must be knowledgeable of the shipment's whereabouts. Not specifying a particular technology provides licensees with flexibility to design a continuous and active monitoring system that meets their unique circumstances. However, GPS is considered an acceptable method of continuous and active monitoring.

21. What are the physical protection requirements for rail shipments of category 1 quantities of radioactive material?

The final rule requires each licensee that ships category 1 quantities of radioactive material by rail to ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to a licensee, third party, or railroad communications center which meets certain criteria. The communications center needs to provide positive confirmation of the location of the shipment and its status. Rail shipment tracking provides the means for a communications center to immediately report an unusual occurrence that could lead to the theft or diversion of the material. Early notification provides for a more timely response from LLEAs, thereby reducing the risk of the misuse of the material.

22. What are the physical protection requirements for shipments of category 2 quantities of radioactive material?

The final rule requires that a licensee shipping category 2 quantities of radioactive material by road maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance. In the case of the licensee using a common carrier, the final rule requires that licensees use a carrier that has an established package tracking system. An established package tracking system means a documented, proven, and reliable system routinely used to transport objects of value. The package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control. The licensee is required to use a carrier that maintains constant control and surveillance during transit and has the capability for immediate communication to summon appropriate response or assistance. The carrier must also require an authorized signature prior to releasing the package for delivery or return.

In general, the licensee must be able to contact the shipping carrier and determine the approximate location of the shipment. Package tracking systems, such as common overnight delivery service with standard tracking, are acceptable. These requirements mitigate with reasonable assurance the risk of loss, theft, or diversion of the material.

23. How long do records related to a shipment need to be maintained?

Licensees are required to retain records for 3 years.

24. How is the public protected from loss, theft, or diversion of these shipments?

Regulating transport of radioactive material is a joint responsibility of the NRC and DOT. The quantities of radioactive materials being considered as part of this rulemaking are transported in packages (casks) that meet rigorous NRC and DOT safety standards. The NRC fact sheet on transportation of radioactive materials can be found at: *http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/transport-spenfuel-radiomats-bg.html.*

The carrier transporting radioactive material must also meet DOT's requirements for shipment of the radioactive material. A link to DOT's Web site is provided on the NRC's Web site at: *http://www.nrc.gov/materials/transportation.html.*

25. What are the requirements for small quantities or irradiated reactor fuel?

The final rule adds a new § 73.35 to 10 CFR part 73, which provides that the requirements for shipments of irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 m (3.3 ft) from any accessible surface without intervening shielding. The requirements are the same as the requirements for shipments of category 1 quantities of radioactive material.

26. What means of transportation are not addressed in this rule?

The rule does not address air or water transport. Transport of radioactive material within airports and by air is regulated by the Federal Aviation Administration. Transport of radioactive material within ports and by waterway is regulated by the U.S. Coast Guard.

The rule also does not address transshipments of category 1 or category 2 quantities of radioactive material through the United States. Transshipments are shipments that are originated by a foreign company in one country, pass through the United States, and then continue on to a company in another country. Transshipments are regulated by DOT and DHS.

Finally, this rulemaking does not address transport of spent fuel, except irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 m (3.3 ft) from any accessible surface without intervening shielding.

III. Summary and Analysis of Public Comments on the Proposed Rule

The proposed rule was published on June 15, 2010 (75 FR 33902), for a 120-day public comment period that ended on October 13, 2010. After receiving several requests to extend the comment period, the NRC published an extension notice on October 8, 2010 (75 FR 62330), that extended the public comment period until January 18, 2011. The NRC received comments from 110 organizations and individuals. The commenters on the proposed rule included States, licensees, industry organizations, individuals, and a Federal agency.

In general, there was a range of stakeholder views concerning the rulemaking, supporting some aspects of

the rulemaking, others opposing some aspects of the rulemaking. Some commenters described the new requirements as going beyond the order requirements. It is important to note that the Commission never intended to just place the orders into the regulations to make them generically applicable. The Commission always intended to consider insights gained from implementation of the orders and any lessons learned during implementation. In addition, the Commission considered recommendations from the Independent Review Panel and the Materials Working Group, as well as a petition filed by the State of Washington.

The comments and responses have been grouped into five areas: General, access authorization program, security during use, transportation security, and miscellaneous. To the extent possible, all of the comments on a particular subject are grouped together. The Commission specifically requested input on eight subjects: (1) Fingerprinting of the reviewing official; (2) background investigation elements; (3) protection of information; (4) LLEA notification at temporary jobsites; (5) reporting requirements; (6) disabling vehicle exemption; (7) license verification; and (8) monitoring plans for railroad classification yard. These eight subjects are addressed within the appropriate area grouping. A discussion of the comments and the NRC's responses follow.

A. General

Comment A1: One commenter stated that the definition for access control should be expanded to include persons with access to SGI, as such individuals are subject to the requirements in § 37.21(c).

Response: The NRC disagrees with the comment. A licensee may include the SGI component in its access authorization program, but it is not required to include SGI. The requirements for SGI are contained in 10 CFR part 73, and the licensee can choose to use the same reviewing official and process or may use a different reviewing official and process. If a licensee chooses to include SGI in its access authorization program under 10 CFR part 37, it will meet the requirements of 10 CFR part 73.

Comment A2: One commenter noted that the definition for aggregated was unclear. Another commenter suggested including unsealed sources and bulk material in this definition. Commenters recommended either clarifying ''multiple sources of bulk material'' or giving it its own definition. A commenter noted it was unclear if the term bulk material aligns with DOT terminology for bulk packaging.

Response: The NRC agrees that the definition could be confusing and has revised the definition to make it clear that radioactive material in any form should be included. The definition is not related to DOT. The intent was to include all material, whether it was in the form of a source (sealed or unsealed) or was contained in a container of some sort, such as feed material, that might be used to create a source.

Comment A3: One commenter noted that the term ''Aggregated'' uses the term ''sealed source'' in its definition and that ''sealed source'' should be defined in 10 CFR part 37 as the use lacks clarity and safety significance. The commenter stated that the definition for sealed source should also be revised in 10 CFR parts 30 and 70. The commenter provided a suggested definition for ''sealed source'' as follows: ''Sealed source means any radioactive material contained to minimize the spread of contamination in accordance with the presentation made in a Sealed Source and Device Registry certificate issued by the U.S. Nuclear Regulatory Commission, an Agreement State or the International Atomic Energy Agency.''

Response: The NRC disagrees with the comment. The term ''sealed source'' has been in the regulations for a long time and the NRC is not aware of any issues that have arisen due to a lack of clarity or safety significance. The term does not need to also be defined in 10 CFR part 37 as it is defined in the parts under which a sealed source would be licensed. Changing the definition of sealed source in 10 CFR parts 30 and 70 is beyond the scope of this rulemaking.

Comment A4: One commenter requested that the definition of ''Escorted Access'' be revised to delete the term ''line-of-sight'' as it is too prescriptive and creates compliance issues should someone ''look away'' or stand in an area of the security zone where the escorted individual's view may be blocked by some object or equipment in the zone. The commenter noted that surveillance can also be accomplished by remote video monitoring. Two commenters suggested that the term escorted access should be revised to allow for video surveillance. The commenters noted that, although the definition was a straightforward, easy way to define escorting, certain video surveillance systems provide improved security and should be allowed. The commenters suggested revising the definition as follows: ''Escorted access means that the actions of the individual are observed 100% of the time while they are in the security zone.''

Response: The NRC agrees with the comment in part. The NRC has removed the term ''line-of-sight surveillance'' from the definition and changed it to ''direct continuous visual surveillance.'' The revised definition will provide greater flexibility for the licensee. The definition of escorted access was not intended to eliminate a licensee's use of video surveillance. Video surveillance is appropriate in some, but not all cases. For example, video surveillance of patients during a treatment would be appropriate.

Comment A5: One commenter requested that the definition of license be revised as follows: ''*License,* except where otherwise specified, means a license for byproduct material issued pursuant to the regulations in 10 CFR parts 30 through 36 and 39 of this chapter or a permit issued by a master materials licensee.''

Response: The NRC disagrees that the definition for license should be revised. The definition used in 10 CFR part 37 is identical to the definition used in 10 CFR part 30. No license will be issued under 10 CFR part 37.

Comment A6: One commenter requested that the definition of license issuing authority be revised to include a master materials licensee (MML) as the MML issues individual permits.

Response: The NRC disagrees with the comment. An MML is not equivalent to an Agreement State and does not issue licenses. The MML does authorize individual permits for specific locations, but cannot authorize beyond what is specified on the MML license.

Comment A7: Several commenters requested that the definition of LLEAs be revised by removing the requirement that the agency be a government entity and to broaden the definition to include private security forces that possess the authority to carry firearms and make arrests. Commenters felt that the definition was confusing and was not clear whether university police could be considered an LLEA under the definition. One of the commenters noted that some university police departments serve as the LLEA and are a fully badged and sworn police force with the authority to make arrests and provide armed response. Some of the commenters suggested revised rule language to clarify the definition.

Response: The NRC agrees with the commenters and has revised the definition of LLEA as follows: ''*Local law enforcement agency (LLEA)* means a public or private organization that has been approved by a federal, state, or local government to carry firearms and

make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.''

Comment A8: Five commenters suggested revising the definition of ''Lost or missing licensed material.'' Commenters indicated that the definition contains subjective terms that make compliance with the reporting criteria difficult. Two commenters recommended removing ''readily'' from the definition as it is too subjective and could lead to inadvertent noncompliance. One commenter recommended linking the definition for lost or missing licensed material with the no-later-than arrival time definition and providing a specific criterion in regards to time to locate material in transit. The commenter suggested the following definition: ''*Lost or missing licensed material''* means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose whereabouts have not been traced in the transportation system within 8 hours past the scheduled no-later-than arrival time.'' The commenter noted that compliance and enforcement of the reporting criteria established in § 37.81 is difficult and that an 8-hour investigation period seems reasonable. Another commenter noted that it typically gives the carrier 24 hours to trace within their transportation cycle, before the package is declared as lost or missing, and that anything less than the 24 hours does not allow sufficient time for the carrier to do a complete document and tracking search and/or a physical search at potential locations. The commenter noted that to declare the package as lost or missing before that will result in many false positives, as 99.99% of the time the package is located within the 24-hour window.

Response: The NRC disagrees with the comment. The term ''lost and missing licensed material'' has been in part 20 for some time, and the definition in 10 CFR part 37 is identical. It would be confusing to have different definitions for the same term and concept in the regulations and licensees would still need to meet the 10 CFR part 20 reporting requirements. A change to 10 CFR part 20 is beyond the scope of this rulemaking. The NRC will provide additional information on the security-specific meaning of ''lost or missing'' in the 10 CFR part 37 guidance document.

Comment A9: One commenter stated that the definition for reviewing official should include a trustworthiness and reliability determination of an individual who has access to SGI–M.

Response: The NRC disagrees with the comment. A licensee may use the same reviewing official for trustworthiness and reliability determinations for both unescorted access and access to SGI. However, the licensee is not required to use the same reviewing official. Determining access for SGI can be a separate program.

Comment A10: One commenter stated that the definition for ''sabotage'' should include a definition of ''security system'' that is referenced in the definition.

Response: The NRC disagrees with the comment. Security system does not need to be defined in the definition of S*abotage.* The security system will be different for each licensee as it is the system that a licensee uses to protect its category 1 and category 2 quantities of radioactive material.

Comment A11: Two commenters suggested modifications to the definition for safe haven. Another commenter noted that the provision cannot be implemented. The commenter noted that based on discussions with military and other Federal institutions, material shipments could not be diverted to them under any circumstances. The commenter suggested that safe havens be contacted, confirmed, and identified. The commenter noted that the licensee and carrier are capable of determining safe havens along the route and that past experience has shown that requesting a State to identify safe havens has been fruitless. Two commenters suggested that the NRC work with the States to identify potential safe havens and publish a list with the final rule. One commenter noted that a licensee does not need to work with the State to identify safe havens. Two commenters noted that the term ''safe haven'' is loosely defined by various agencies and States, and that States do not recognize, identify, or acknowledge that they have such sites. Two commenters noted that DOT removed the term from its regulations because it could not be implemented.

Response: The definition for *safe haven* has been retained in the final rule. Licensees, not States, are responsible for identifying safe havens. Identification of safe havens has been in the regulations for spent fuel transportation for a number of years and was included in the RAMQC Orders for transport of category 1 shipments, so it is not a new concept. If a licensee is having trouble identifying safe havens along a route, it may discuss possible locations with the NRC, State police, or the State's designated contact (usually State police).

Comment A12: One commenter (a State) noted that the definition for temporary job site has a compatibility of Level B, which requires identical wording. The commenter noted that this definition does not meet its definition which is much more restrictive in that it limits the amount of time radioactive material can be used at a temporary job site. The commenter stated that there should not be two different definitions for the same word listed in different parts of the regulations. Another commenter stated that the temporary job site definition would be more appropriate with a designation of C instead of B as it would allow States to be more restrictive.

Response: The NRC agrees with the comment in part and disagrees in part. The NRC tries to use the same definition for terms that are used in more than one part of the regulations. However, there are terms that have different meanings depending on the use. *Temporary job site* is defined in both 10 CFR part 34 and part 39 with definitions that are specific to the part. Since activities that are covered by both 10 CFR part 34 (radiography) and part 39 (well logging) may also be subject to 10 CFR part 37 security provisions, the NRC extracted the common elements of the definitions for use in 10 CFR part 37. However, the requirements related to temporary job sites have been removed from 10 CFR part 37, and the term is no longer defined in the rule.

Comment A13: Three commenters suggested revising the definition of *''Trustworthiness and reliability.''* One commenter stated that the definition is vague and subjective and that use of subjective terms in the definition such as ''dependable'' and ''unreasonable'' makes it impossible to apply. The commenter noted that a licensee cannot ensure that individuals are trustworthy and reliable and as such do not constitute an unreasonable risk to public health and safety. The commenter requested that concrete and nonsubjective criteria be provided. Another commenter requested that the definition be revised by adding ''or as provided for in § 37.29'' to the end of the definition. One commenter stated that the definition should be modified to include characteristics required by individuals having access to SGI–M.

Response: The NRC disagrees with the comment. The NRC does not believe that these terms make it impossible for licensees to determine trustworthiness and reliability. The concepts of dependable and unreasonable were also contained in the orders. The

determination is performance based and provides licensees the flexibility to develop programs and criteria that they are comfortable with. The definition in 10 CFR part 37 is consistent with the definition of the term in 10 CFR part 73. The NRC does not believe that it is necessary to add provisions that include access to SGI. Access to SGI is covered by 10 CFR part 73. While a licensee may use the same access authorization program for determinations for access to SGI, the licensee may have a separate program.

Comment A14: One commenter suggested maintaining the current interpretation for unescorted access that an individual having unescorted access to several less than category 2 quantity sources which are secured behind their own physical barrier would not require inclusion in the trustworthiness and reliability determination program. The commenter noted that the rule defines unescorted access to include individuals who have access to sufficient quantities of radioactive materials such that the individual could successfully accumulate lesser quantities of material into a category 1 or category 2 quantity. The commenter noted that this is a significant change and would result in a big increase in the number of individuals who will need background checks completed or require very complex source handling procedures to prevent the ability to aggregate sources. One commenter noted that the examples provided in the Statements of Consideration did not appear to apply to an individual with access to multiple licensee facilities listed on the same license or multiple separate licenses by the same organization. The commenter noted that these persons could aggregate materials just as easily as if they were at a single location under one license, but the security rules would not apply to them. One commenter stated that the NRC should reevaluate the need to include accumulation considerations for access authorization control.

Response: The NRC has reevaluated the requirement and has revised the definition for *Unescorted access.* All provisions of the rule now only apply to licensees that possess an aggregated quantity of radioactive material that equals or exceeds the category 2 threshold. The term aggregated contains the concept of co-location and breach of a barrier.

Comment A15: One commenter requested that the NRC add a definition for master material license to 10 CFR part 37.

Response: The NRC disagrees with the comment. Master material license is not specifically mentioned anywhere in the regulations, and the NRC does not believe that there is a need to mention it in 10 CFR part 37 as licenses are not issued under 10 CFR part 37.

Comment A16: One commenter suggested including a definition for security plan at least to the extent that 'security plan' is meant to encompass a description of a licensee's background investigation process, access control program, and physical protection measures with those specific features as identified elsewhere in the part.

Response: The NRC disagrees with the comment and does not believe that a definition of security plan is necessary. Section 37.43(a) contains the purpose of the security plan and specifies in general terms what must be included in the security plan. A definition would not add further to the understanding.

Comment A17: One commenter suggested that a limited exemption be provided to licensees who consistently meet the requirements imposed by the orders. The commenter noted that the NRC could establish criteria for the assessment of licensee's security programs and if the program was deemed inadequate, corrective action could be initiated.

Response: The NRC disagrees with the comment. The NRC believes that the requirements in 10 CFR part 37 are necessary to ensure adequate protection of category 1 and category 2 quantities of radioactive material. A licensee can always ask for relief from a particular measure and if the NRC agrees that adequate basis exists and that it is protective of public health and safety, it can grant the request.

Comment A18: One commenter, while supporting the decision to limit the rule to category 1 and category 2 sources, noted that not all category 2 sources are realistically in danger of being tampered with, particularly in large medical facilities with exhaustive security controls in place. The commenter noted that if a large medical facility's security measures are breached, sealed sources in medical devices are generally not readily accessible even by technicians with highly specialized skills and tools. Two commenters suggested exempting medical and research facilities from all of the 10 CFR part 37 requirements except for the security program or security plan. The commenters noted that the public pays for and benefits from medical and research use of these sources, and as such, should have a higher acceptable risk. The commenters noted that this is similar to the basic premise behind the patient release criteria in 10 CFR part 35 (§ 35.75), generally licensed sources, tritium exit signs, and smoke detectors, where the public can have a higher acceptable risk for the benefits which the materials bring them.

Response: The NRC disagrees with the comment. The category 1 and category 2 quantities of radioactive material possessed by a medical facility present the same risk as category 1 and category 2 quantities of radioactive material possessed by other licensees. Almost any user could argue that its use benefits society in some manner. The comparison to generally-licensed sources is not applicable, as generally licensed sources contain less than category 2 quantities of radioactive material and are considered safe for use without additional measures.

Comment A19: One commenter expressed concern that the source aggregation changes could cause additional medical facilities to come under the rule. The commenter was opposed to the rule applying to any facilities beyond those under the orders.

Response: The application of the source aggregation criteria has not changed from the orders. The concept of co-location and breaching of a common physical barrier are still factors. While the rule may apply to licensees that were not subject to a particular order, the licensee would only be subject to the requirements if it aggregates the material. Some licensees that have an aggregated category 1 quantity may have only been subject to the Increased Control Orders and would now be subject to some additional requirements under the rule that apply to all licensees that possess a category 1 quantity of radioactive material.

Comment A20: Several commenters expressed concern about the extension of applicability for the proposed rule beyond byproduct material licensees to power reactor, research and test reactor, and fuel cycle licensees. Commenters noted that extending the requirements to large component or radioactive material storage facilities located on power reactor plant sites appears unwarranted. Commenters recommended limiting the applicability to exclude material that meet a criterion for a specific activity, surface contaminated objects, bulk packages with mass exceeding 100 pounds or limit aggregating material to a small number (fewer than 10) of discrete sources, and areas where a large number of packages containing low concentrations of radionuclides of interest are stored over a very large area, because they believe the risk is low and should not present a security concern. Commenters recommended that an appropriate threshold be developed that

exempts large volume or weight of a single item or of the aggregated quantity such that exemption requests are not necessary and the security provisions of 10 CFR part 37 would not apply. Commenters noted that such materials are typically either of such large mass or volume, or of such a diffuse constitution, that they should be considered low risk for any malevolent purpose. Commenters noted that the industry is concerned that casting a wide net will present a situation whereby certain categories of facilities are regulated through exemptions.

One commenter suggested that NRC should consider using dose rates at 1 meter relative to the Appendix I definitions in IAEA TECDOC–1344 for other than sealed sources as an alternative. The commenter noted that the IAEA document acknowledges that the categorization system may not be appropriate for waste management. The commenter noted that tables in the document are based primarily on discrete sealed sources of very high specific activity and do not apply to packages in transport. The commenter further noted that IAEA also recommends 100 rads (1 Gy) to bone marrow in 100 hours at 1 meter from sources that cannot be carried as the threshold for a ''dangerous'' source. With a category 2 source threshold at 10 x D, this also provides a practical justification for exempting low specific activity (LSA) materials, as they are restricted to dose rates of 1 rem/h at 3 meters. Using very restrictive point source consideration (*i.e.,* an inverse square relationship), LSA materials cannot result in dose rates exceeding 10 rads/h at 1 meter. The other deterministic considerations presented in the TECDOC are similarly bounded by the low specific activity of such wastes.

Commenters noted that there is a distinct difference between a given amount of activity confined in a relatively small sealed source and the same quantity dispersed around a large site in numerous containers, none of which individually contains activity approaching a category 2 amount. Commenters noted that low specific activity material, objects with low levels of surface contamination, or numerous small sources would not be attractive for theft or sabotage because of the disperse nature of the radioactivity. One commenter noted that this is recognized in the transportation arena that allows use of industrial packages for low specific activity and surface contaminated materials versus more robust Type A or Type B packages for shipping higher activity materials.

Commenters noted that the packaging of the source is relevant to potential theft and diversion. Commenters indicated that a quantity of material where the total activity exceeds a category 2 level but is dispersed in contaminated metal and other material within one or more large concrete and/or steel containers presents a different hazard than the same amount in a relatively small unshielded source. Commenters noted that large and heavy containers are difficult to move and steal without detection and that the containers themselves are self-protecting from a sabotage point of view. The commenter noted that this is important for licensees engaged in decommissioning, processing, and shipping of bulk waste material. Commenters noted that the volume and mass required for a category 2 quantity of material renders theft an incredible scenario and that damaging and dispersing a category 2 quantity of material such that deterministic effects result from internal or external exposures are not credible.

Commenters provided examples of: (1) A commercial waste processor that could have several thousand packages in a common storage area, each containing waste forms of relatively low specific activity and each with a mass of several hundred to several thousand pounds and (2) a radioactive waste disposal facility that has a 60-car train of radioactive waste within its controlled area.

Response: The NRC agrees with the comment in part. The NRC has determined that it is appropriate to include a partial exemption in the regulation instead of treating exemptions requests on a case-by-case basis. Paragraph (c) has been added to § 37.11 to address radioactive waste materials. The provision does require that some security measures be applied to the waste, but the majority of the 10 CFR part 37 requirements would not apply. Measures include the use of continuous physical barriers, alarmed locked gates or doors, and assessment and response of unauthorized entry. The provision does not include the use of dose rates, but would cover much of the low specific activity waste addressed by the comment.

Comment A21: One commenter felt that the proposed requirements should not apply to holders of category 2 sources, particularly since the new requirements would not apply to the transshipment of category 1 and category 2 sources. The commenter noted that if the Juarez, Goiana and Mayapuri radioactive material dispersal incidents all occurred in the United States, in a single year, the annualized risk of premature death would be a small fraction of the 1E–6 probability frequently used in establishing regulatory requirements.

Response: The NRC disagrees with the comment that the security provisions should not apply to category 2 sources. The Commission has determined that category 2 sources are risk significant and, therefore, warrant additional security measures. The NRC does not regulate transshipments.

Comment A22: One commenter noted that the scope suggests that 10 CFR part 37 applies to any person who is authorized to possess or use category 1 or category 2 quantities of radioactive material at any site or contiguous sites subject to the control by the licensee. The commenter pointed out that when radioactive material is used at temporary job sites, the licensee will be in control of the quantities of radioactive material, but may not necessarily be in control of the sites. The commenter also noted that the scope does not indicate that this applies to persons who have access to SGI–M and implies it only applies to those authorized.

Response: The NRC agrees that the language may be confusing as it applies to temporary job sites and has revised the scope to clarify the intent. The requirements of 10 CFR part 37 do not apply to SGI–M. However, some of the security information developed under 10 CFR part 37 would be considered SGI–M and needs to be protected in accordance with 10 CFR part 73. The requirements for SGI–M are contained in §§ 73.21 and 73.23.

Comment A23: One commenter stated that the exemption provided in § 37.11(b) for facilities with 10 CFR part 73 security plans should be retained but offered a suggested revision to clarify who has inspection/security oversight. The commenter noted that it would be a significant paperwork task to keep records showing compliance with both sets of controls without a real increase in the security of either material. The commenter also noted that it would be an added inspection burden if the program required separate inspections by an Agreement State and the NRC. The commenter suggested adding a sentence at the end of the paragraph: ''Although the NRC maintains primary oversight of these facilities, inspection by Agreement State representatives is permitted.''

Response: The NRC is retaining the exemption for licensees that possess the category 1 or category 2 quantities of radioactive material under an NRC license. For those licensees located in

non-Agreement States, the licensee can choose if it wants to protect the material under the security plan required by 10 CFR part 73 and approved by the NRC or protect the material under a 10 CFR part 37 security plan. If the material is protected under a 10 CFR part 73 security plan, the licensee's records should note that the material is protected under a 10 CFR part 73 security plan. Any inspection would be against the security plan under which the material is protected. For licensees that are located in an Agreement State and possess category 1 or category 2 quantities of radioactive material under an NRC license, the licensee can choose whether to protect the material under the 10 CFR part 37 or the required and approved 10 CFR part 73 security plan. For licensees that possess the category 1 or category 2 quantities of radioactive material under an Agreement State license, it will be up to the Agreement State to decide if it will allow the licensee to protect the material under an NRC-required and approved 10 CFR part 73 security plan. The licensee would want to discuss this with its State regulator. Agreement States are not required to adopt the provision on exemptions in § 37.11(b) as a matter of compatibility. As for adding a provision to allow State personnel to inspect, the NRC disagrees with the comment. A new provision is not necessary to allow an Agreement State to inspect against a license that it has issued.

Comment A24: One commenter stated that the NRC should not promulgate the rule for licensees currently under NRC 274i Security and Fingerprinting Orders specified in EA–08–225 issued August 29, 2008. The commenter noted that these licensees are few in number, and the NRC should continue to regulate them under the existing orders. The commenter noted that this should include possession of certain isotopes greater than category 1. The commenter suggested new paragraphs for § 30.34 as follows: ''30.34(m) Security requirements for licenses who possess an individual source less than category 1 but greater than or equal to category 2 of the isotopes listed in Appendix E to 10 CFR part 20—Nationally Tracked Sources Thresholds. Licensees or applicants must submit to NRC for review and approval of information to comply with the requirements and time frames specified in NRC Order EA–07–305 dated December 5, 2007, and its attachments titled ''Table 1 Radionuclide of Concern and Attachment 3 Specific Requirements Pertaining to Fingerprinting and Criminal Records Checks'' which are incorporated by reference (or listed in a new Appendix F of 10 CFR part 30). This rule is in addition to any other requirements specified in applicable 10 CFR parts.'' and ''30.34(n) Licensees must notify NRC of their intention to possess an individual source greater than category 1 of the isotopes listed in Appendix E to 10 CFR part 20—Nationally Tracked Sources Thresholds.''

Two commenters stated that the authority to regulate the physical protection of category 1 and 2 quantities of material in transit (subpart D) should not be relinquished to the Agreement States. The commenter noted that while the adequacy and compatibility requirements of Agreement State programs would require the Agreement State regulations to be ''essentially identical'' to those contained in subpart D, there are several instances where Agreement State regulations include requirements in addition to those found in the analogous NRC regulations. The commenter noted that Agreement State regulations that go beyond those contained in subpart D could hinder interstate commerce and result in additional burden and expense to the licensees. Another commenter stated that there is value to Federal preemption in regulating the transportation security of category 1 and category 2 quantities of radioactive material as this would ensure uniformity of the administration of the requirements. One commenter suggested that the authority be transferred to DOT and not the States.

Two commenters stated that the NRC should retain authority for the security of category 1 licensees under common defense and security unless the States are given authority to regulate all aspects of category 1 sources. The commenters noted that the rule does not give the States authority to regulate the safeguards information and, therefore, the regulatory authority would be split. Commenters suggested removing the SGI designation. One commenter noted that under Supplementary Information Item II.(A)(10), it states, ''Although the NRC relinquishes authority to States for certain materials, under section 274(m) of the AEA no such agreement will affect the authority of the Commission to take regulatory action to protect the common defense and security.'' The commenter noted that Item 11 states, ''The provisions put in place for the inspection of licensees that received the orders issued under common defense and security would remain in place until the State implements the requirements.'' The commenter stated that this contradicts Item 19 which states the NRC will not enter such agreement for common defense and security. The commenter indicated that category 1 materials must be considered under the terms of common defense and security and should remain under NRC jurisdiction for security. The commenter noted that the proposed rule states ''licensees who activities are covered under part 73 would be exempt from part 37.'' The commenter stated that most of the irradiator requirements (SGI–M) are based in 10 CFR part 73 and therefore indicates that there are no category 1 licensees that are subject to State purview. The commenter noted that there are references to SGI–M in the proposed rule which further leads to the need for clarification.

One commenter noted the drafted document appears to be inconsistent in this regard and that the issue of jurisdiction and responsibility for these licensees must be clearly made and the necessary inclusions and exclusions to the rules made accordingly.

Response: The NRC disagrees with the comment. The NRC believes that it is appropriate for the Agreement States to regulate the physical protection of category 1 and category 2 quantities of radioactive material. Although some of the security information is considered to be SGI–M under 10 CFR part 73, the NRC does not believe that this prevents the Agreement States from regulating the security aspects for those facilities. While the State could not inspect the SGI provisions for protection of the material unless it entered into a 274i Agreement with the NRC, the State could inspect and enforce the provisions of 10 CFR part 37. The exemption provided in § 37.11 was intended to only cover facilities that had a security plan under 10 CFR part 73 and not the information protection aspects. The NRC has clarified the exemption. *See also* the responses to comments A23, A46, and A47 and the response to question 10 in Section II.A of the Statement of Considerations.

Comment A25: One commenter noted that the rule should adopt the entire categorization of radioactive sources from the IAEA Safety Guide No. RS–G–1.9—Categorization of Radioactive Sources. The commenter pointed out that the IAEA Safety Guide provides a more robust, risk-based categorization of quantities than the categorization provided in the proposed rule as it describes five different categories that differentiate sources possessed by various licensees based on quantity as well as use. The commenter also stated that the rule should be limited to source quantities characterized as category 1 and category 2 in the IAEA Safety

Guide. The commenter noted that the types of sources used in refineries and petrochemical plants are considered category 3 and according to the IAEA Safety Guide, the types of sources used in refineries and petrochemical plants present less risk than the source quantities in category 1 and 2.

Response: While the NRC agrees that category 3 sources present less risk individually than category 2 sources, the NRC disagrees with the remainder of the comment. Unlike RS–G–1.9, the NRC and the IAEA Code of Conduct do not consider use (*e.g.,* fixed gauges, well logging, and radiography) in the determination of source categorization. Regardless of its intended use, any category 2 quantity may pose a significant risk to individuals, society, and the environment. Additionally, 10 CFR part 37 applies not only to sources, but also to bulk material. The rule also addresses aggregation of radioactive material at or above the category 2 threshold. If several sources are stored together that individually are considered to be category 3 sources, but together form an aggregated category 2 quantity, the attractiveness of the material as a group would be the same as if there were only one category 2 source. If the sources used in the refineries and petrochemical plants are not aggregated, 10 CFR part 37 would not apply.

Comment A26: One commenter indicated that for facilities covered under the Maritime Transportation Security Act, the rule would mean additional burdens, redundancies and confusion. The commenter recommended that for facilities regulated under DHS/DOT Personnel Surety programs, the rule should allow a program of reciprocity to reduce redundancy. The commenter noted that at National Petrochemical & Refiners Association (NPRA) member facilities, the Radiation Safety Officer (RSO) and technicians have intimate contact with source holders and the rule would be best implemented by the RSO and technicians and not the entire facility population.

Response: The NRC disagrees that the rule imposes additional burdens, redundancies, and confusion. The Maritime Transportation Security Act, which amends the Merchant Marine Act of 1936, establishes a program to ensure greater security for United States seaports and provides requirements pertaining to personnel whose duties are related to import and export activities at the ports. Part 37 transportation requirements only apply to the domestic portion of an import or export. For an import, the provisions would apply once the shipment clears customs and for exports, up to the point the shipment crosses the border. Holders of the TWIC do not need to undergo fingerprinting and the FBI criminal history records check again as § 37.29 relieves them from the requirement. However, the individuals would need to undergo the remaining elements of the background investigation.

As for the NPRA member facilities, the provisions for access authorization under 10 CFR part 37 would only apply if the facility allows unescorted access to category 1 or category 2 quantities of radioactive material. The licensee decides who is in charge of the security program as the regulations do not specify any specific position.

Comment A27: One commenter asked for clarification whether the provisions apply to those licensees authorized to possess the material or those that actually possess the material. The commenter noted that the language discrepancy occurs throughout the rule and must be corrected. Another commenter asked that the requirements be spelled out separately to avoid confusion.

Response: The proposed rule contained some provisions that pertained to licensees that were authorized to possess category 1 or category 2 quantities of radioactive material. The final rule contains provisions that apply only to those that actually possess and aggregate the material to a category 1 or category 2 quantity.

Comment A28: Some commenters objected to the need to submit compliance information. The commenters felt that this is an unnecessary burden to both the licensees who have already implemented a program and the regulatory agency. The commenters noted that the licensees subject to this part have already been inspected multiple times and have established a compliance history, and therefore these licensees should be exempted from having to resubmit existing information. One commenter thought that the provision was vague as written and requested clarification that compliance with the provision would be achieved by submitting a letter to the NRC indicating that the licensee has successfully implemented the program. One commenter noted that the NRC must identify in the regulation what essential elements are to be included because placing the information in guidance is unacceptable. One commenter thought the provisions should be removed from the rule but if retained offered suggested language. One commenter stated 30 days did not provide adequate time. Commenters noted that requiring a licensee to report compliance was an unnecessary burden as licensees are expected to comply and that the normal terms of implementation for rulemaking are adequate. One commenter suggested deleting § 37.41(d) as unnecessary since current implementation of the Increased Control Orders is an adequate basis to conclude the current licensees will transition to compliance with the new regulations.

Response: The NRC agrees that the submittal of compliance information is not needed and has removed the requirement from the rule. The NRC and the Agreement States already know which licensees will need to implement 10 CFR part 37. A provision has been added in § 37.41 to require a licensee that has never implemented the orders or 10 CFR part 37 to notify the NRC 90 days before aggregating material to a category 1 or category 2 quantity of radioactive material.

Comment A29: One commenter stated that in § 30.32 the wording implies the application must include an affirmation that the proposed security program meets the requirements in 10 CFR part 37. The commenter stated that instead the application should include a proposal as to how the requirements will be satisfied and be subject to evaluation for sufficiency. The commenter suggested the following language: ''(1) An application for a specific license to use, store, or transport category 1 or category 2 quantities of radioactive material must include information outlining the applicant's security program designed to satisfy the requirements in part 37 of this chapter.''

Response: The NRC has reevaluated the need for the requirement and has decided that it is unnecessary. A new applicant will be evaluated on the need to implement 10 CFR part 37 as part of a prelicensing review and inspection. If the licensee will be aggregating the material to a category 1 or category 2 quantity of radioactive material, the licensee will be expected to implement the provisions of part 37 before receiving a license.

Comment A30: One commenter noted that institutions that have aggregated material may require significant time to implement the provisions as it will require a financial investment. The commenter did not suggest an appropriate timeframe. Several commenters noted that 30 days for implementation was not sufficient for the changes that need to be made. Two commenters suggested a 1-year effective

date. Commenters supported terminating the orders on the effective date of the rule to avoid confusion and noncompliance. One commenter stated that the rule should be clarified as to the compliance date and asked what happens if a licensee is not in compliance by that date. One commenter noted that it would be difficult to comply with the 30-day timeframe for preparing and implementing the security plan and implement the security program at least 90 days before it '' * * * aggregates radioactive material to a quantity that equals or exceeds the category 2 thresholds.'' The commenter further noted that work varies significantly from project to project and that security plans that are sufficiently robust to be effective also would vary significantly. The commenter noted that it is not possible to prepare or implement a project-specific security plan without knowing the details of the project and that frequently licensees need to mobilize and initiate work within a matter of a few days, which would not be possible if a 90-day advance notice was required.

Response: The NRC notes that the proposed rule indicated that the final rule would be implemented 270 days after publication in the **Federal Register**. The 30-day timeframe was for the licensee to submit compliance information. The NRC has removed the requirement to submit the compliance information. In addition, the NRC is providing a 1-year implementation period for the final rule. This should allow ample time for licensees to implement the requirements, including the development of any new procedures and the conduct of necessary training. Agreement States will be given 3 years from publication of the final rule to adopt the rule provisions instead of from the effective date. This will still provide the States with a 3-year window to adopt the regulations.

Comment A31: One commenter noted that its business depends on the ability to not co-locate or aggregate its radioactive material and that it manages its radioactive material through quantity control and physical separation of material not in use at any one time. The commenter noted that, if it was required to aggregate all of its material, which includes the standard, returned sources, sources packed and ready to ship, cell waste (cell sweep, dust, chips), plus isotope material, it would be continuously above the category 2 threshold, and the additional requirements would be a significant economic hardship on the company.

Response: The rule does not require co-location or aggregation of radioactive material. If a licensee does not aggregate the material above a category 2 threshold, the licensee will not need to implement the provisions of 10 CFR part 37. The final rule only applies to those licensees that possess aggregated quantities at or above the category 2 threshold.

Comment A32: Several commenters objected to the change from a 3-year retention period for records to a 5-year retention period. One of the commenters believed that the change from the standard practice where most documents in the industry have a mandated 3-year retention period is redundant and unnecessary and will add a potential for confusion where none need exist. One commenter questioned why there was a need to keep superseded portions of procedures and the security plan for 5 years. The commenter stated that this was an added burden and does not add to the security of the material or to the protection of the health and welfare of the general public. The commenter also questioned the need to keep training records for 5 years stating that it should be adequate for a licensee to show that it is conducting annual training and suggesting a 1-year retention period.

Response: The NRC agrees with the comment on the retention period and has changed the record retention period for most records to 3 years. Safety records are maintained for 3 years, and the NRC agrees that there is no benefit to keeping only the security records for 5 years. There are a few licenses that have an inspection frequency of 5 years; however, the majority of the licensees impacted by 10 CFR part 37 have a 3-year inspection frequency. Superseded procedures and training records are necessary from an inspection and enforcement aspect.

Comment A33: One commenter questioned how long to hold on to the old security plan once it is updated and how long the documentation of the coordination activities is to be maintained. Another commenter recommended changing the record retention period for the security plan so that the record could be destroyed 5 years after it is no longer needed. The commenter noted that there was no value in keeping the security plan once a licensee was no longer allowed to possess materials that would require a security plan.

Response: Section 37.43(a)(4) specifies that the superseded portions of the security plan be retained for 3 years (note the proposed rule specified 5 years). For any record where a retention period is not specified, § 37.103 specifies that the record be retained until the Commission terminates the license. The NRC has added a retention period of 3 years for the documentation records. The NRC agrees with the comment and has changed § 37.43(a)(4) to indicate that the security plan must be retained for 3 years after it is no longer required.

Comment A34: One commenter requested clarification in § 37.101 on the concept of ''safeguards against tampering with'' to preclude unwarranted interpretations during a regulatory inspection about the requirements for records. The commenter offered suggested language as follows: ''the licensee shall maintain adequate safeguards against tampering with and loss of records. The requirements in § 37.43 for protection of information are not applicable to this section.'' Another commenter recommended replacing the term ''safeguard'' with ''protect'' in § 37.101. The commenter felt that safeguard should be only used when referring to safeguards.

Response: The NRC disagrees with the comment. The records provision in § 37.101 is identical to provisions in other parts of the regulations. The NRC is not aware of any issues that have arisen over interpretation. The provisions of § 37.43 would apply if the records were the security plan, implementing procedures, or the list of individuals allowed unescorted access.

Comment A35: One commenter stated that the enforceability in regulations of records retention for reporting suspicious activities is unduly burdensome on the licensee. The commenter stated that due to the clandestine nature of reporting suspicious activities to LLEAs, the licensee may not have the LLEA's or NRC's fluid responses to these reports for security reasons and that ongoing investigations can encompass years, so the recordkeeping requirement is inconsistent and can be inconsistent with other recordkeeping requirements depending on the incident nature of the reporting.

Response: The NRC does not understand the commenter's concern. There are no record retention requirements associated with reporting suspicious activities. The 30-day written report is not required for suspicious activity reporting. The licensee is required to assess the suspicious activities and notify the LLEA, only if the licensee believes it is appropriate to do so. The licensee is only required to notify the NRC if the LLEA is notified. The NRC acknowledges that there is

some subjectivity involved in determining what is considered to be suspicious.

Comment A36: One commenter questioned who was authorized to authenticate reproduced records in § 37.101.

Response: ''Authorized personnel'' in § 37.101 are those authorized by the licensee to authenticate duplicated documents.

Comment A37: In the proposed rule, the NRC specifically requested comment on the reporting requirements. Commenters were requested to provide information on: (1) Whether the proposed rule contained the appropriate items and thresholds to be reported to the LLEA; (2) whether the proposed rule contained the appropriate items and thresholds to be reported to the NRC; (3) whether suspicious activities should be reported and if they are reported, what type of activities should be considered suspicious; and 4) whether the timeframe for reporting was appropriate. Fifteen commenters provided responses to the specific questions on this subject.

Of those that provided responses to the questions on the reporting requirements, the majority agreed that the reportable items and thresholds were appropriate, and five commenters felt the items and/or thresholds should be changed. One of the commenters indicated that the NRC and/or FBI should be notified of any denial for cause of a request for unescorted access as this might be domestic intelligence information of interest to the FBI or DHS. The commenter also felt that the NRC/FBI should be notified of activities determined to be suspect by the LLEA. Three commenters stated that actual and attempted theft were appropriate reportable actions but that suspicious activities should be removed from the rule. Of the commenters that supported reporting of suspicious activities, no commenter offered suggestions as to what type of activities should be considered suspicious. A couple of the commenters stated that the licensee is the best judge of what type of activities would be considered suspicious at its facility. Other commenters just suggested that the NRC should provide guidance to assist the licensee. Most of the commenters indicated that the reporting timeframes were appropriate. One commenter stated that the timeframes did not allow for a realistic period of assessment. The commenter noted that classifying some of these events will be very subjective and some may be impossible to distinguish from events that are not malicious or not related to a category 1 or category 2 quantity of radioactive material. Another commenter stated that a specific timeframe should be specified instead of immediate and upon discovery. The commenter stated that failure to set specific time limits will result in delay in implementing the Federal response framework.

In addition to those that provided responses to the specific questions, seven commenters addressed this subject in their comments. Two commenters noted that classifying some of these events will be very subjective and some are likely to be impossible to distinguish from events that are not malicious or are not related to category 1 or category 2 quantities of radioactive material. The commenters noted that reasonable persons could interpret the expectations of the NRC and the details of a specific event very differently. The commenters further noted that these events will require a period of assessment, and sometimes a lengthy period of assessment, to determine the nature of the event and that the timeframes for reporting do not anticipate a period of assessment. As an example the commenters provided the situation where a discrepancy in the inventory is discovered without any evidence of an ''actual theft'' (*e.g.,* locks that have been cut), requiring a period of assessment to determine the nature of the event. Two commenters stated that the requirement for sabotage reporting should be removed. The commenters noted that it would not be possible for a licensee to determine the ''intent'' of the person causing any damage and whether his or her ''intent'' is malevolent. One commenter noted that § 37.57(b) requires NRC notification when there is ''suspicious'' activity related to ''possible'' theft, sabotage, or diversion. The commenter stated that it would only be appropriate to notify the NRC if the licensee, in conjunction with the LLEA, determines that there is some validity to the suspicion. The commenter noted that the NRC should encourage open communication between the licensee and LLEA, and licensees should feel free to express even minor concerns, uncertainties, etc. to LLEAs for their assistance without having to notify the NRC in each instance. One commenter agreed with the reporting requirement for suspicious activities but noted that it would be dependent on the licensee's judgment based on its circumstances. The commenter noted that it would be difficult to quantify what suspicious activity is ahead of time, and the licensee should not be second guessed on whether or not it made this type of notification. One commenter noted that suspicious activities should continue to be reported on a voluntary basis as it is very subjective and would be difficult to enforce. One commenter recommended defining suspicious activity. One commenter expressed concern over the requirement to report suspicious activities asking how it could be enforced as individual judgment may differ as to what constitutes a suspicious action. The commenter also questioned why, if the LLEA provides an immediate assessment and determines that the event is completely harmless, the NRC needs to be notified. The commenter suggested language for § 37.57(b) to increase the clarity and to allow for some local interpretation. The suggested language is as follows: ''The licensee shall notify the LLEA upon the discovery, of any security-related events involving suspicious activity that may indicate preoperational surveillance, reconnaissance, or intelligence-gathering activities directed against licensees, or their facilities related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material. If the event is not found to be harmless, the licensee should notify the NRC's Operations Center (301–816–5100) as soon as possible, but not later than 4 hours, after notifying the LLEA.''

Response: The NRC has revised the reporting requirement to make it clear the licensee does not need to contact the LLEA when it has determined that an alarm was not the result of an attempted or actual theft, sabotage or diversion. The NRC does not believe that it is necessary for the licensee to report to the NRC the denials for unescorted access. The NRC has access to the information during inspections. The NRC has retained the reporting requirement for sabotage. If an individual has caused damage and placed the radioactive material at risk, the NRC wants to know regardless of the individual's intent. The NRC disagrees that it is necessary to establish a set timeframe for reporting attempted theft, diversion, or sabotage as the terminology is consistent with other similar reporting requirements. The NRC agrees that it is good practice to have open communication between the LLEA and the licensee.

On the question of reporting suspicious activities, the NRC has decided to retain a requirement on suspicious activities. The reporting of suspicious activities is an important component of evaluating the threat against licensed facilities and material. The NRC reviews individual notifications of suspicious activities to evaluate whether potential

preoperational activities (*i.e.,* multiple events at a single site or multiple events at multiple sites) may be part of a larger plan and to integrate this information with other agencies in the homeland security and intelligence communities. The NRC is not requesting that the licensees actively gather intelligence but rather that they report information they believe is relevant to the security of their facility or activity. The reporting requirements provide a consistent means of communicating this information to the NRC. The requirement has been revised to require the licensee to assess suspicious activities and to only contact the LLEA if the licensee believes it is appropriate to do so. The licensee is required to notify the NRC only if notifying the LLEA. Some suspicious actions may be successfully handled by the licensee without the need to involve law enforcement or the NRC. The NRC believes that the revision will provide the licensee more flexibility in determining how to address any situation that involves what might be considered suspicious activities. The NRC does recognize that what is considered to be suspicious is subjective and not all licensees will handle the same situation in the same way. On balance, the NRC believes that it will receive information on the more serious instances, but not the trivial instances.

Comment A38: One commenter noted that in the absence of any suspicious or known mitigating factors, it has typically given the carrier 24 hours to trace within their transportation cycle, before the package is declared as lost or missing. The commenter noted that this has proven to be the most effective time period and that anything less than the 24 hours does not allow sufficient time for the carrier to do a complete document and tracking search and/or a physical search at potential locations. The commenter noted that to declare the package as lost or missing before that will result in many false positives, as 99.99% of the time the package is located within the 24-hour window which will result in significant resources of both the regulatory agencies and licensees involved, trying to get useful information that just isn't available.

Response: Part 37 requirements would not change this practice. The reporting requirement in § 37.81(b) is similar to the requirement from the orders. The licensee is not required to notify the NRC when the material has not arrived by the no-later-than arrival time, rather it is to notify the NRC once it has been determined that the material is lost or missing. This allows some time for investigation before the first phone call to the NRC. Similar to the order requirement, the licensee is required to notify the NRC a second time if the material is still missing after 24 hours of investigating. The rule should not result in a change in practice and in fact gives the licensee additional time before starting an investigation.

Comment A39: Several commenters requested information on how diversion differs from a theft as in both cases the material is removed and the movement is unauthorized. The commenters felt that the requirements for reporting diversion and suspicious activities were subjective and that the NRC's expectations concerning diversion and suspicious activities were not clear.

Response: Diversion means the unauthorized movement of radioactive material subject to this part to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored. As an example, a source purchased using a legitimate license may be shipped to an unauthorized location. Diversion does not require the adversary to defeat the licensee's physical security system. Theft is the act of taking material from a facility, vehicle, or temporary job site and requires the adversary to defeat the licensee's physical security system.

What constitutes a suspicious activity can be subjective and may vary from one licensee to another. Examples of suspicious activities are provided in the guidance. The reporting of suspicious activities is an important component of evaluating the threat against licensed facilities and material. The NRC reviews individual notifications of suspicious activities to evaluate whether potential preoperational activities (*i.e.,* multiple events at a single site or multiple events at multiple sites) may be part of a larger plan and to integrate this information with other agencies in the homeland security and intelligence communities. The NRC is not requesting that the licensees actively gather intelligence, but rather that they report information they believe is relevant to the security of their facility or activity. The reporting requirements provide a consistent means of communicating this information to the NRC.

Comment A40: One commenter recommended placing the reporting requirements in §§ 37.57 and 37.81 in subpart M of 10 CFR part 20 to avoid duplicative regulations. The commenter stated that the notifications in § 37.81 should be the same as 10 CFR part 20 and should be immediately after discovery, but only after initially notifying the LLEA. The commenter noted that immediate notifications of theft should be made to the LLEA, not as soon as possible as the proposed rule would allow. Another commenter noted that the reporting requirements should be consistent to ensure that multiple reports for the same event are not an unintended consequence.

Response: The NRC disagrees with the need to move the 10 CFR part 37 reporting requirements to 10 CFR part 20. The NRC has revised § 20.2201(c) to include a reference to 10 CFR part 37 so that duplicative reports are not required. The NRC disagrees with the comment to change as soon as possible to immediate in § 37.81(c) and (d). The historic interpretation of immediate reporting has been up to 4 hours. The NRC does not believe that 4 hours is the appropriate timeframe for the notification; notifications need to be made promptly. For this reason, the NRC has used ''as soon as possible'' in both the orders and the rule language.

Comment A41: One commenter questioned the difference between the requirements to report no later than 4 hours after the discovery of any actual theft or diversion in § 37.57 and the requirement in § 37.81 to report within 1 hour of lost or missing material.

Response: Under § 37.57, the licensee is to immediately notify the LLEA and then to contact the NRC as soon as possible. If contacting the NRC would somehow interfere with or delay the LLEA response, the licensee can take up to 4 hours to notify the NRC. The LLEA would be in charge of any response as the occurrence was at a fixed location. It is the NRC's expectation that the notification would occur very quickly after the LLEA is notified. Under § 37.81, the licensee is required to contact the NRC within 1 hour because the NRC may need to initiate a response as the occurrence was during transit.

Comment A42: One commenter noted that the rule should not require the licensee to provide a copy of the reports required under § 37.81(g) to the Office of Nuclear Security and Incident Response (NSIR). The commenter believes that the NRC should provide the copy to NSIR. One commenter recommended that the written follow-up report for event reporting be submitted within 60 days instead of 30 days. The commenter noted that 30 days is insufficient time for licensees to complete an investigation, prepare, and submit a written report and that the 30 days is inconsistent with the timeframe for submittal of written follow-up reports that are required elsewhere in 10 CFR Chapter I. One commenter objected to the wording of the requirement in § 37.81(g) to ''include sufficient

information for NRC analysis and evaluation'' as it is too open-ended and the commenter felt that further explanation is necessary. The commenter stated that the NRC is doing a disservice to licensees if it wishes to claim that such items are difficult or impossible to predict for all cases or would be more fully addressed in guidance.

Response: The NRC agrees with the comment in part and disagrees with the comment in part. The NRC often specifies that a copy of a report should be submitted to a specific office and does not believe that it presents a large burden on the licensee. While some of the follow-up reports contained in Title 10 Chapter I are submitted within 60 days, some are submitted within 30 days. The 30-day timeframe for a written follow-up report is consistent with the requirement for the follow-up report for reporting lost and missing material contained in 10 CFR part 20. If the investigation is not complete, a final report can be submitted upon completion. The NRC agrees with the comment on sufficient information and has added language similar to the provisions in § 20.2201(b).

Comment A43: One commenter requested that a subsection be added to § 37.57 to clarify requirements for reporting by a licensee or permittee under a master materials license that has an onsite LLEA in order to preclude unwarranted interpretations during a regulatory inspection about reporting to NRC. The commenter offered suggested language as follows: ''(d) For a licensee or permittee under a master materials license with an on-site LLEA, reporting in this subsection is required only after the on-site LLEA has confirmed the attempted, actual, or actual activity related to theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material.''

Response: The NRC disagrees with the comment. The reporting requirements remain the same whether the LLEA is on site or off site. The NRC does note that the LLEA does not need to be contacted until after the licensee has assessed the situation. The LLEA needs to be notified only if the licensee has determined that an attempted or actual theft, diversion, or sabotage act has occurred or is taking place, or, as appropriate, if the licensee has identified suspicious activities.

Comment A44: One commenter recommended defining substantive information in § 37.81(h). The commenter noted that the term substantive information indicated a higher priority notification than 30 days.

Response: The NRC disagrees with the comment. The provision is identical to the provision in § 20.2201(d). A licensee should use judgment on whether the information should be provided sooner than 30 days.

Comment A45: One commenter stated that certain provisions of the proposed rule would be matters of mandatory compatibility between the NRC and the Agreement States. The commenter stated that the NRC has no statutory basis requiring an Agreement State to maintain regulations compatible with those of the Commission. The commenter believes that the Commission may request compatibility by the State, but cannot require it.

Response: Section 274, ''Cooperation with States,'' of the AEA provides for cooperation with States, authorizing the Commission to enter into Agreements with States for certain materials provided that certain conditions are met. Two specific sections of the AEA provide for compatibility requirements: (1) Subsection 274d. gives the Commission the authority to enter into an Agreement with a State if the Commission finds that the State program is compatible with the Commission's program for regulation of such materials (subsection 274d(2); and (2) under subsection 274g. of the AEA, the Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that the State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

In the Commission's policy statement, ''Policy Statement on Adequacy and Compatibility'' (62 FR 46517; September 3, 1997), the Commission addressed a similar comment. At that time, it was the Commission's view that, pursuant to section 274, an Agreement State's program should be compatible with NRC's program for the duration of the Agreement for the following reasons, set forth in the policy statement:

> Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of radiation protection standards ''to assure that the State and Commission programs for the protection against hazards of radiation will be coordinated and compatible.'' This provision demonstrates Congress' intention that the compatibility between the NRC and Agreement State programs should be maintained on a continuing basis.
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> Subsection 274j.(1) calls on the Commission to suspend or terminate an Agreement State's program if ''the State has not complied with one or more of the requirements'' of Section 274. The Commission believes that this phrase ''one or more of the requirements,'' encompasses all requirements of Section 274, including the requirement for compatibility in Subsection 274(g).
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> Under Subsection 274d.(2), the Commission is authorized to enter into an agreement with a State if the Commission makes both requisite findings that the State program is compatible with the NRC's program and adequate to protect public health and safety. Absent a continuing compatibility requirement, an Agreement State could divert from having a compatible program the day after any agreement is signed with NRC. This would render the Commission's initial compatibility finding required by Subsection 274d.(2) meaningless.

In addition, the NRC has an obligation, pursuant to section 274j. of the AEA, to periodically review existing Agreement State programs to ensure continued adequacy and compatibility. Section 274j. of the AEA also provides that the NRC may terminate or suspend all or part of its agreement with a State if the Commission finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of section 274j. In fulfilling this statutory responsibility, NRC provides oversight of Agreement State radiation control programs to ensure that they are adequate and compatible prior to entrance into a section 274b. agreement and that they continue to be adequate and compatible after an agreement is effective. The NRC, in cooperation with the Agreement States, established and implements a performance evaluation program to provide NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement, the Integrated Materials Performance Evaluation Program (IMPEP).

There have been no changes to the AEA or to Commission policy that would render a different interpretation of these sections of the AEA. Therefore, no changes were made to the rule in response to this comment.

Comment A46: Two commenters stated that it was unclear if the rule can be implemented under a public health and safety basis. The commenters noted that the performance objective in § 37.21(b) is to prevent an unreasonable risk to public health and safety or the common defense and security, but that the basis for the rule is health and safety and not common defense and security.

Response: This rule can be implemented under the NRC's authority to protect the public health and safety. The rule amends NRC's regulations to impose security requirements for the

use of category 1 and category 2 quantities of radioactive material. The proposed security requirements set forth the objectives and minimum requirements that licensees must meet to protect against theft or diversion of category 1 or category 2 quantities of radioactive material. Accordingly, these requirements increase the protection of the public from harm resulting from the unauthorized use of these materials.

As discussed in the Statements of Consideration for the proposed rule (75 FR 33902, 33907 (June 15, 2010)), when regulations such as these address both the NRC's public health and safety and common defense and security missions, the operative question is whether NRC oversight is necessary to fulfill the common defense and security aspects of the regulations. The NRC believes that the Agreement States can consistently and adequately implement the physical protection requirements, and as such, there is no need for independent NRC action to protect the common defense and security. However, the NRC retains the authority under section 274(m) of the AEA to take any necessary actions for protection of common defense and security should individual licensees or the State program develop issues requiring immediate action.

Implementing these regulations under the NRC's public health and safety authority avoids potential complications with licensees being subject to dual regulatory authorities for a single license. Agreement States can impose these security requirements because they provide a reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material that has a potential to result in significant adverse health impacts and reasonably constitutes a threat to public health and safety. In addition, making these requirements applicable to Agreement State licensees through the Agreement State Program allows Agreement States to impose these requirements on its licensees and makes Agreement States responsible for enforcement of these requirements on its licensees.

Comment A47: One commenter noted that while the NRC has regular oversight of individual Agreement State programs through its Integrated Materials Performance Evaluation Program (IMPEP), the NRC should evaluate its authority under IMPEP against the authority granted to the Secretary of Transportation under U.S.C. Title 49 Section 5125—Preemption. Prior to relinquishing its regulatory authority to the Agreement State, the NRC should ensure that it is authorized and capable of preempting an Agreement State regulation pertaining to the physical protection in transit of category 1 and category 2 quantities of radioactive materials if the Agreement State regulation does not comply with the general criteria provided in 49 U.S.C. 5125. The commenter stated that if the NRC concludes that it is indeed appropriate for the Agreement States to regulate the physical protection of category 1 and 2 quantities of radioactive material while in transit then a mechanism has to be in place to ensure these Agreement State regulations cannot add requirements in addition to those provided in 10 CFR part 37.

Response: The NRC in its Policy Statement on *Criteria for Guidance of State and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,* developed criteria to implement the Agreement State program, authorized by Public Law 86–373 which was enacted in the form of a new section to the AEA (section 274) and approved by the President on September 23, 1959 (46 FR 7540–7546; January 23, 1981). Criterion 10 of the Policy Statement, *Regulations Governing Shipment of Radioactive Materials,* provides that the State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. Therefore, State regulations regarding transportation of radioactive materials must be compatible with 10 CFR part 71.

The NRC believes that it is indeed appropriate for the Agreement States to regulate the physical protection of category 1 and category 2 quantities of radioactive material while in transit under the provisions of the 274b. Agreements and the continued oversight provided by the NRC. Many of the transportation requirements fall within the Compatibility Category B, Program Elements with Significant Transboundary Implications. Agreement State program elements under Compatibility Category B should be essentially identical to those of the NRC. The NRC evaluates these program elements under IMPEP and can take actions when a State has a program that is not compatible including termination or suspension of an agreement. We believe that this mechanism appropriately addresses the concern that a mechanism be in place to address the scenario of Agreement State regulations, adding requirements beyond those provided in 10 CFR part 37 where the additional requirements would not meet the compatibility designation for a given provision.

Comment A48: Numerous commenters stated that the requirements created too much burden with little, if any, improvement in security and are not necessary or justified and are a waste of taxpayer money. Some commenters felt that the requirements were not commensurate with the risk of the material and were unnecessarily complex, complicated, and long. Some commenters noted that there were no quantifiable benefits, only qualitative benefits and, therefore, there is no evidence that additional measures are necessary. One commenter noted that there must be a balance between the real benefit of providing the services that the category 1 and category 2 sources provide, against a hypothetical malevolent act that may involve one of these sources. Some commenters felt that implementation of the new requirements would financially cripple small companies and would limit funding for new, safer technologies. Some commenters indicated that the burden could result in some medical facilities not offering radiation therapy services, a reduction in research, and will negatively impact patient care. One commenter was of the opinion that the number of licensees would drop by 25 to 30 percent. Commenters felt that the original order requirements are adequate and should be maintained with no additions as they were sufficient to ensure security. Commenters felt that additional requirements should be based on documented deficiencies in the orders and not on the very low likelihood of a terrorist event. One commenter noted that inspections insure that licensees are performing operations in such a manner as to meet regulatory requirements as they stand. One commenter noted that the NRC has not conducted a national performance-based assessment of the current orders. Commenters stated that the rule was overly prescriptive. Several commenters stated that the requirements should be graded for different types of facilities and material and fixed versus portable material. Some commenters felt that the NRC has lost touch with the way the industry operates or wouldn't suggest unnecessary changes.

Commenters noted that monetary burden of compliance with the orders has required industry to reduce the amount of resources allocated for other aspects of its business and has made it challenging to compete in the global market. Some commenters expressed

concern over the cumulative impact noting the implementation of the National Source Tracking System and the license verification system. One commenter noted that it wasn't just the initial outlay, but also the annual burden that needed to be considered. One commenter noted that the rule would impact licensees who have previously not been impacted by the orders. The commenter noted that educating and inspecting these new licensees will impact the NRC staff resources, and could diminish their focus on ensuring security compliance for existing category 1 and category 2 sources. One commenter noted that the rule would be burdensome on the regulatory agency and LLEAs, as well as licensees.

One commenter suggested placing generic requirements in the rule and then address subsets of licensees in the NUREG–1556 series. One commenter suggested that the proposed rule should be renoticed after making changes with more detail provided as to the actual safety and security benefits to be obtained. One commenter noted that the rule does not conform to the recent draft policy statement on the Protection of Cs-137 Chloride sources.

Response: The NRC understands the concerns of the commenters and has tried to limit the burden while continuing to ensure the adequate safety and security of sources of concern. The security orders were issued based on the specific knowledge and information available to the Commission at the time the orders were issued. The NRC never intended to simply make generically applicable security requirements identical to the orders. The NRC always intended to consider insights gained from the implementation of the orders and implementation of the inspection program, as well as other factors. A number of changes have been made based on specific public comment. The result of these rule changes significantly reduces the burden of the final rule as compared to the proposed rule. The NRC believes that the provisions in the final rule are necessary to protect the public health and safety and ensure security. There could be some facilities impacted by the rule that were not impacted by the orders. Some facilities, such as reactors and fuel facilities, may be impacted by 10 CFR part 37. There should not be any byproduct material facilities newly impacted by 10 CFR part 37 that were not impacted by the orders.

Comment A49: A couple of commenters stated that the NRC should only include the order provisions in the rule and then start work on developing a strategic rulemaking, which may need to include changes in legislative authority, to develop a 10 CFR part 37 with a more risk-informed and performance-based model. The commenters noted that this effort should include evaluating requirements for different types and quantities of radioactive material and different uses, working with States and law enforcement groups to determine effective ways to transport material and working with law enforcement groups to determine effective ways that an LLEA can know and provide emergency response support to licensees. Another commenter suggested using subparts based on the type of business and security risks commensurate with each type. One commenter noted that the two-part approach would be a major accomplishment for the NRC and would be consistent with NRC's ''Principles of Good Regulation.'' The commenter noted that this approach would reflect the Commission's Staff Requirements Memorandum (SRM) on the draft policy statement on the protection of Cesium-137 Chloride sources (SRM for COMSECY–09–0029) which states: ''any additional efforts to enhance security for these sources should consider whether there are benefits of further risk reduction given the NRC's actions to date and the current threat environment.''

Response: It was never the NRC's intent to include in the rulemaking only the order provisions. While there are differences from the orders, the NRC believes that the requirements contained in the final rule are necessary. As a general principle, the NRC prefers to construct performance-based regulation rather than explicit, prescriptive regulation where possible. The rule does not dictate what measures each licensee must use to protect the radioactive materials under its possession and control, rather the rule allows the licensee to choose those measures that best meet its needs. The NRC believes that the rule is risk informed and contains an optimized mix of performance-based and prescriptive requirements. A two-step process to conduct two rulemakings would be a waste of not only to the NRC and Agreement State resources but also those of licensees. The basic requirements in the orders were the same for all licensees. The NRC is aware of the areas that need enhancements and these areas are addressed in the rule. The NRC did add a new option to the regulatory analysis for the final rule that addresses only including the order provisions in the rule.

Comment A50: One commenter stated that the total cost of the 10 CFR part 37 revision should include the costs that the licensees incurred to meet the orders and that the estimate and burden on licensees is out of proportion to the actual risk. Another commenter stated that the option 1 cost analysis was inappropriate because it assumed no security measures had been implemented, and it should have considered that the orders were in place. The commenter stated that an additional cost option determining the cost of implementing a new 10 CFR part 37 with requirements equivalent to the orders would be helpful. Several commenters stated that the cost estimates were underestimated but did not offer better cost estimates. One commenter stated that the annual recurring licensee cost was underestimated by at least a factor of 2. One commenter estimated that it would cost about $30,000 to implement the provisions and about $20,000 every year to maintain the plan and that the reinvestigation would cost between $10,000 and $20,000 depending on the number of users that need to be rechecked. One commenter noted that the regulatory analysis did not specifically describe the average licensee on which the analysis is based. One commenter (a research facility) noted that it would need to process an additional 60 individuals per year and that the rule would cost approximately $23,000 per year and an initial outlay of $30,000. One commenter noted that it had added one additional employee to address the order requirements and that the rule would add yet more burden. One commenter stated that the regulatory analysis does not provide any technical data to support the statement that the qualitative benefits outweigh the costs of the rule. One commenter noted that a major medical facility could have hundreds of individuals in its access authorization program. One commenter noted that it had spent about $250,000 on physical site upgrades alone and has recurring costs of $50,000 annually for the alarm system to support the existing orders. One commenter stated that it spends approximately $100,000 a year for the transportation of category 1 and category 2 sources under the orders. The commenter noted that the amount of employee resources to implement and support the orders has been approximately 400 man days initially and 75 man days annually with total costs to date of approximately $1.5 million. The commenter estimated that to implement the additional requirements in the rule, it would cost

$250,000 initially which includes 100 man days to set up all the programs and procedures and an ongoing annual cost of $100,000 to $200,000 for hiring at least one to two individuals as a technical/administrative resource to implement all the procedural and documentation requirements. The commenter stated that the costs assumed in the regulatory analysis ($25,000 initially and $27,000 annually) to be substantially underestimated. Some commenters noted that the regulatory analysis did not identify any quantifiable values and that the qualitative benefits were identical to the program in place today. One commenter noted that National Nuclear Security Agency (NNSA) is spending $26 million to implement voluntary enhancements at certain facilities. One commenter noted that it was not clear that NRC had considered the potential impacts to licensee safety programs, research, and an increase in disused sources due to ''deteriorating financial circumstances'' (mentioned in SECY 10–0164) that may result from the rulemaking.

Response: The NRC appreciates the information provided on cost and considered that information when estimating the costs in the final regulatory analysis, increasing the annual cost of implementing the measures, increasing the number of individuals requiring a background investigation, and using different values for a small, medium, and large facility. The regulatory analysis prepared to support the proposed rule did contain the cost information on the orders. As the cost has already been expended, it is considered a sunk cost and is not included in the main analysis. The cost is provided for informational purposes. Many attributes considered in a regulatory analysis can only be expressed in a qualitative way and cannot be quantified. Differences in quality cannot be easily assessed or expressed. While it is possible that some licensees may decide to go out of business and there could be additional disused sources, the NRC is not able to predict how many, if any, companies might decide to go out of business.

Comment A51: One commenter noted that the regulatory analysis and regulatory flexibility analysis did not reflect the actual number of licensees impacted (closer to 2,900) versus the number actually implementing the orders (about 1,400).

Response: The regulatory analysis did reflect the 2,950 licensees that would be impacted by the proposed rule. Section 3.2.3 lays out the assumptions used in the analysis. The analysis assumed that 1,400 licensees would need to fully implement the security provisions and that another 1,550 licensees would need to conduct some activities. The commenter is correct that the regulatory flexibility analysis only addressed those that fully implemented the provisions.

Comment A52: Two commenters noted that the regulatory analysis does not address how harmonization between the NRC proposed rule and eventual Agreement State regulations will be assured; specifically in regards to the requirements contained in subpart D. The commenter noted that inconsistencies between Agreement State transport security requirements could greatly hinder the ability to transport category 1 and 2 quantities of radioactive materials in commerce and could also serve as barriers to transporting category 1 and 2 quantities of materials through an Agreement State. The commenter noted that it is also unclear if the NRC considered what fees Agreement States may impose to fund the cost of regulating the physical protection of material in transit. The commenter noted that the State of Iowa currently has what Industry considers excessive fees to transport category 1 quantities of materials through the State.

Response: The commenter is correct that harmonization of the requirements between the NRC and the Agreement States is not addressed in the regulatory analysis; the cost for the States to adopt the regulations is addressed. The final rule is a matter of compatibility between the NRC and the Agreement States. The NRC analyzed the final rule in accordance with the procedure established within Part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs.'' Most of the provisions in subpart D are Compatibility Category B because there are significant transboundary implications. The Agreement States must adopt Category B program elements in an essentially identical manner. The Agreement States do have 3 years to adopt the regulations. For transportation of category 1 quantities of radioactive material, an Agreement State licensee will continue to follow the NRC order on transportation until the State adopts the regulation. The order would then be withdrawn and the transportation would occur under the Agreement States' regulations. For category 2 shipments, an Agreement State licensee will follow the Increased Control provisions on transportation until the State adopts the regulations. As for the fees that a State may charge, the NRC does not have any control as this is not a matter of compatibility. A State could choose to charge a fee whether the transport occurred under NRC or State requirements. The fees aspect is beyond the scope of this rulemaking.

Comment A53: One commenter noted that because Agreement States have 3 years to adopt regulations compatible with the final rule, provisions need to be made so licensees with both NRC and Agreement State licenses who modify their programs to comply with the NRC requirements are not cited as noncompliant with the Agreement State license.

Response: A licensee must be in compliance with the regulations for the jurisdiction in which it operates. Part 37 is no different than any other regulation in that regard. A licensee that has implemented the 10 CFR part 37 requirements should be in compliance with the majority of the provisions in the orders. The licensee can have discussions with its Agreement State regulator about adopting the provisions before the State has issued compatible requirements.

Comment A54: One commenter addressed the questions related to small businesses. The commenter indicated that the rule needs to be more risk informed and better recognize the actual risk associated with category 2 sources by providing more flexibility. The commenter indicated that the annual risk from a category 2 radioactive material dispersal device is between 10,000 and 100,000 times less likely than many other sources of premature death that the United States population commonly accepts from smoking, obesity, medical accidents, and auto accidents.

Response: The Commission has determined that category 1 and category 2 quantities of radioactive material warrant additional security measures. In addition, the Radiation Source Protection and Security Task Force found that the category 1 and category 2 quantities warrant enhanced security and protection. *See also* QA5 and QA6 in Section II of this document.

Comment A55: Two commenters provided input on the specific questions related to information collection. On the question of whether the proposed information collection is necessary for the proper performance of the functions of the NRC and the information has practical utility, one commenter agreed with the need for signed consent but questioned the usefulness of the credit history review and the FBI criminal history records check. The commenter agreed that a licensee needs to have an individual's employment and education history, but questioned the need to

require the individual to provide the information multiple times if the licensee already has the information in the individual's employment record. The commenter did not address the utility of any other aspects of the information collection. Two commenters did not agree with the burden estimate. One commenter stated that the estimate of the number of individuals who would need to have a background investigation was low; but provided no other estimates. The commenter also indicated that the cost of the background investigation was underestimated, and estimated that a background check would cost from $60 to $250 and higher. The commenter noted that it would take licensee personnel 10 hours to gather, submit, and review background information for a normal background check, to more than 20 hours if the individual had resided in multiple State and foreign jurisdictions. The commenter estimated that it would take an individual 2 hours to complete a personal disclosure history, and that this was not included in the analysis. The commenter noted that a licensee would have to develop a compliance program required by the Fair Credit Reporting Act to obtain credit history and arrest records. A second commenter stated that the current labor rate for nonroutine technical support is $149 per hour. The commenter stated that first-year implementation would be about 320 hours, or $47,000 and about $30,000 a year thereafter. On the question of whether the burden of the information collection could be minimized, one commenter noted that a more prudent and efficient method of checking background and overall status of an employee is to use the federal database ''E-verify.'' The commenter stated that the NRC could rely on the E-verify check as one of the background check tools for a licensee's access authorization program. The commenter also requested that guidance be given on FBI criminal background reports to assist a licensee's understanding of what the information in the report means.

Response: The NRC notes that the FBI criminal history records check is required by the EPAct. The NRC has removed the requirement for a credit history evaluation as part of the background investigation. *See* response to Comment B67 for further discussion on credit history. There is no requirement for an individual to provide employment and education history multiple times. If the licensee already has that information, it does not need to go back to an individual to obtain the information a second time. Effort for the personal history disclosure was not included because it was viewed as information that would be provided when seeking employment and completing an application for employment. The information on cost and time was factored into the regulatory analysis for the final rule. As for the E-verify system, a licensee may use it as one tool for completing a background investigation, but use of E-verify alone would not meet the requirements for the background investigation. Guidance on the background investigation is available in the implementation guidance.

Comment A56: Commenters requested guidance for various provisions of the rule, noting that the guidance was necessary for both the licensees and the regulatory agency. Commenters were specifically interested in guidance for both the determination on the reviewing official that would be used by the regulator and for the determination for those to be allowed unescorted access to the material that could be used by the reviewing official. Commenters felt that the lack of criteria or guidance will result in inconsistent approval or denial of the individuals. Commenters noted that compliance determinations are performance based and that the regulatory agency would have no recourse but to deem a licensee's determination appropriate as long as the licensee documented the basis. Several commenters agreed that licensees should be allowed flexibility in conducting the background reviews. One commenter suggested that the NRC should review 49 CFR 73.8 for specific guidance for denying an individual access.

Response: Guidance on the rule is available in the document ''Implementation Guidance for 10 CFR part 37 Physical Protection of Byproduct Material Category 1 and Category 2 Quantities of Radioactive Material,'' which will be published at approximately the same time as this final rule. Guidance on what should be considered in evaluating the results from the background investigation is in the document. The document does not contain a checklist, but provides general guidelines for making the determination on whether to grant an individual unescorted access. The determination basis is performance based; each licensee is responsible for making its own determination. Under the orders, the trustworthiness and reliability official made the determinations of who was granted access and that official is now called the reviewing official. Although there will be additional factors to consider, the decision-making responsibility remains unchanged.

Comment A57: One commenter stated that the sections for the Paperwork Reduction Act Statement and Regulatory Flexibility Certification do not appear to have included pool irradiator and manufacturer/distributor licensees with category 1 quantities of radioactive material in their scope, and the documents will need to be augmented.

Response: Pool irradiator and manufacturer/distributor licensees were included in the analysis conducted for the Paperwork Reduction Act Statement and the Regulatory Flexibility Certification.

B. Access Authorization Program

Comment B1: One commenter stated that § 37.21(a) did not address the requirements for currently approved access authorization programs or the actions that must be taken by the licensee within a specific timeframe. Another commenter noted that it was not clear what licensees that implemented the orders needed to do.

Response: The NRC did not approve access authorization programs under the orders. The NRC approved them in the sense that we inspected and did not cite them if their programs were adequate. All licensees that allow unescorted access to an aggregated category 1 or category 2 quantity of radioactive material must have an access authorization program that meets the requirements of subpart B on the date that the rule is effective in the State in which the licensee conducts its operations. The NRC is providing a 1-year implementation period for the final rule.

Comment B2: One commenter requested clarification as to whether § 37.21(a)(2) is based on possession or authorized possession.

Response: The proposed rule contained several provisions that were based on authorization to possess. These provisions are not contained in the final rule. The NRC has revised the text to make clear that the provisions apply only to those that actually possess the material.

Comment B3: One commenter stated that in § 37.21(b), the term ''unreasonable risk'' should be defined.

Response: The NRC disagrees with the comment. The NRC acknowledges that implementation is dependent on the judgment of the reviewing official; however, this is a performance-based requirement and provides the licensee with flexibility in the implementation of its program. Although, the NRC has removed the term ''unreasonable risk''

from the requirement, the concept remains because the concept is inherent in the definition of trustworthy and reliable.

Comment B4: One commenter stated that § 37.21(c) should be deleted as being redundant to previous sections about who is approved for unescorted access.

Response: The NRC disagrees that § 37.21(c) is redundant. The section establishes the individuals that are subject to the access authorization program.

Comment B5: One commenter stated that § 37.21(c)(1) introduces new criteria for approval (individuals with job duties that require unescorted access) that are not otherwise used in the regulations. The commenter indicated that if it was considered necessary to limit approvals, the section should be modified by inserting the word ''only.''

Response: The NRC disagrees with the comment. Section 37.21(c)(1) establishes the individuals who are subject to the access authorization program and, therefore, need to undergo a background investigation and be determined to be trustworthy and reliable.

Comment B6: One commenter asked if the shipper or the carrier was responsible in § 37.21.

Response: The licensee is responsible for assuring that all individuals who have unescorted access to the category 1 or category 2 quantities of radioactive material have undergone a background investigation (or fall under one of the categories for relief) and been determined to be trustworthy and reliable. A commercial carrier is subject to separate State and federal transportation security requirements, and is not a licensee under 10 CFR part 37.

Comment B7: One commenter noted that movement control center personnel were included in the list of individuals who were to be subject to an access control program. The commenter noted that the licensee may not have direct oversight of these centers and the center may be monitored by LLEA or other security or emergency personnel which could make enforcement difficult or impossible as these individuals would likely not be responding to an emergency. One commenter noted that the vehicle driver and accompanying individual(s) and movement control center personnel are typically employed by the carrier, and the access authorization program should be under the carrier's responsibility. One commenter stated that licensees can't implement the requirement of § 37.21(c)(1)(ii) and (iii) when carriers are used for shipments of category 1 quantities.

Response: The movement control center personnel were included because they have access to SGI–M. The vehicle driver and accompanying personnel were included, in part, because they have access to the SGI–M information. Whether these individuals come under 10 CFR part 37 access authorization program or not, they would still need to be fingerprinted and determined to be trustworthy and reliable under the requirements of 10 CFR part 73. The NRC has revised § 37.21(c) to reflect that those with access to SGI may be placed under 10 CFR part 37 access authorization program or they may be part of a separate program that meets the requirements of 10 CFR part 73. Law enforcement personnel are relieved from the fingerprinting and background check that are required for access to SGI and are relieved from the background investigation required under 10 CFR part 37.

Comment B8: One commenter stated that § 37.21(c)(3) conflicts with the requirements of § 37.21(c)(1)(ii), (iii), (iv), and (v) as none of those personnel require unescorted access to radioactive material.

Response: The NRC disagrees that there is conflict with the requirements. Some of the personnel referenced in § 37.21(c)(1) were part of the access authorization program because they required access to SGI information which also requires a determination of trustworthiness and reliability. However, the requirements for the background investigation required for SGI and unescorted access are not identical, so the NRC has revised § 37.21(c) to reflect that those requiring access to SGI may be included in the access authorization program, but are not required to be included. The licensee can choose to have a separate program to provide access to SGI information.

Comment B9: One commenter noted that the specific requirement for access to materials included transport of category 1 and category 2 materials and that the requirements should be consistent with 10 CFR part 71 and 49 CFR 171 through 180.

Response: Part 71 does not contain requirements related to access of materials. The referenced DOT regulations do not contain requirements for access to materials, except for a driver who needs a hazardous material certification which includes fingerprints and an FBI criminal history check. Part 37 provides relief from the fingerprinting aspects of the background investigation for individuals that have undergone the DOT check.

Comment B10: Two commenters requested clarification whether an engineer designing the security systems for an irradiator room would need unescorted access. The commenters noted that it would be beneficial if the requirements for individuals with access to sensitive information were clearly described.

Response: Whether to grant unescorted access to an engineer designing the security systems would be up to the licensee. The licensee could arrange for the engineer to be escorted while in the irradiator room or could conduct a background investigation and grant the engineer unescorted access if the licensee believed it was warranted. The requirements for individuals with access to sensitive information are contained in § 37.43(d).

Comment B11: One commenter asked what shipping information requires an access authorization program.

Response: The shipping information related to shipments of category 1 quantities of radioactive material is considered to be SGI–M. Part 73 contains requirements for individuals to undergo a background check and be determined to be trustworthy and reliable before being allowed access to SGI. A licensee can include those individuals needing access to SGI–M in its access authorization program under 10 CFR part 37 or in a separate program under 10 CFR part 73. If a licensee has an access authorization program that meets the requirements of 10 CFR part 37, the program will also meet the requirements of 10 CFR part 73 for access to SGI–M.

Comment B12: One commenter noted that a licensee's access authorization program expands beyond those permitted to have unescorted access to category 1 or 2 sources and, therefore, the rule text must accurately reflect the need to include such individuals without requiring them to have unescorted access to the sources.

Response: The access authorization program may also apply to those that require access to SGI, such as personnel involved in transportation of category 1 quantities of radioactive material. The rule has been clarified to reflect that those with access to SGI may be part of the access authorization program for materials unless the licensee chooses to have a separate program. Although the comment is not clear, the NRC believes that the commenter was referring to the reviewing official as someone that should not be required to have unescorted access to the sources. The NRC believes that it is important that

the reviewing official undergo the same background investigation as those being reviewed and approved by the reviewing official. Therefore, the reviewing official is included in the access authorization program. *See also* the responses to B14 and B15.

Comment B13: One commenter noted that if the radioactive material is in a secured area within a room, then a trustworthiness and reliability determination shouldn't be required for personnel who need access to that room.

Response: Secured area can mean different things. If the material is accessible by breaching a common barrier, then the individuals would need to undergo a background investigation and be determined to be trustworthy and reliable. *See* the implementation guidance for examples.

Comment B14: In the proposed rule, the NRC specifically invited comment on the issue of fingerprinting the reviewing official. Commenters were specifically requested to provide information on: (1) Whether the reviewing official needs to be fingerprinted and have an FBI criminal records check conducted; (2) whether the other aspects of the background investigation are adequate to determine the trustworthiness and reliability of the reviewing official; (3) whether there are other methods that could be used to ensure that the reviewing official is trustworthy and reliable; (4) whether the requirement to fingerprint the reviewing official places too large of a burden on the licensee; and (5) whether the Agreement States have the necessary authority to conduct reviews of the nominated individual's criminal history record. Twenty commenters provided responses to the specific questions on this subject.

Of those that provided responses to the questions on fingerprinting of reviewing officials, the commenters were evenly split on whether the reviewing official should be fingerprinted. Of those that responded no on the fingerprinting, most did not support the concept of a reviewing official at all and stated that the trustworthiness and reliability official established under the Increased Control Orders should remain in place. One of those opposed to the fingerprinting of the reviewing official stated that the official should be approved by the licensee as did a couple of the commenters that indicated support for fingerprinting. One of those supporting fingerprinting was opposed to requiring the individual to have access to radioactive material. The commenter suggested that the NRC table this element until NRC is granted authority to require fingerprinting of the reviewing official. The majority of those responding indicated that the other aspects of the background investigation were adequate to determine the trustworthiness and reliability of the reviewing official, including several commenters that supported the fingerprinting requirement. Several responded that specific guidance and acceptance or rejection criteria must be made available. Several commenters indicated that the reviewing official should meet all of the requirements for unescorted access. Three commenters stated that other aspects of the background investigation were not adequate but also indicated that they did not support the concept of a reviewing official. Based on its experience with the orders, one commenter stated that the criminal history derived from the FBI should serve as the sole basis. Most of the commenters did not think that the fingerprinting placed too large a burden on the licensee. Of the two commenters that felt that fingerprinting did place too large of a burden on the licensee, one of the commenters did not explain its rationale and the other stated that it was unnecessary for the reviewing official to have access to the material. One commenter indicated that this placed too large a burden on the States. On the question of whether the States have the authority to conduct reviews of the nominated individual's criminal history record, the response was inconclusive, with many commenters noting the authority was undetermined or not clear whether the State had authority. One State indicated that it did have the authority, two States that they probably had the authority, and one State indicated that it did only if specific disqualifying criteria are put in the regulations. Suggestions for other methods that could be used to ensure that the reviewing official is trustworthy and reliable included deferring the decision to licensee management using best business practices; using a background investigation by a professional such as a police investigator, private security clearance contractor, or human resource professional; and use of employment history with the licensee.

In addition to those that addressed the specific questions, 33 commenters addressed this subject. The Conference of Radiation Control Program Directors (CRCPD) conducted a survey of the Agreement States, and 69 percent of those that responded disagreed with the requirement for the regulatory body to approve the reviewing official. However, 62 percent did support the requirement that the reviewing official be fingerprinted. Some commenters noted that there may be some States that may not have the authority to adjudicate fingerprints for approval. CRCPD reported that 69 percent of the responders to its survey indicated that they do not have the necessary authority to conduct the criminal history reviews without legislative action. Some of the States noted that they have the authority but do not want to conduct fingerprint reviews. One State indicated that it may not have the statutory authority to write a rule to approve the reviewing official, and another noted that it did not have the authority unless there were clear criteria. At least one State noted that it may not be able to completely protect the findings of the criminal history records check from public release. Several commenters expressed concern that the regulatory body (NRC or the Agreement State) would be basing the regulatory approval of the reviewing official on only the results of the fingerprints for a criminal history records check, and the other elements of the background investigation would not be part of the approval process. Commenters noted that neither the regulatory body nor the licensee would have the benefit of the complete information on an individual in order to make an informed determination. Commenters felt that the approval of the reviewing official should remain with the licensee and not the regulatory body because the licensee has more direct personal knowledge and experience with the individual, and the licensee has much more to lose by approving an incompetent reviewing official. Some commenters supported the approval of the reviewing official to be an outside agency such as the NRC as a logical methodology.

Some commenters noted that the regulator should not deny someone based only on the fingerprint results. Several commenters noted that this would put additional resource burden on the regulatory body and that there is no compelling evidence of threat to public health and safety or security or that the current system is not working. Some States expressed concern over the possible liability for approving a reviewing official. Some commenters objected to the need to submit or remove the background check results outside of their offices and send them to the regulatory body. Commenters questioned how the Agreement State will be able to review the fingerprint results when the fingerprints are sent to the NRC. One commenter stated that the

rule should specify who evaluates all of the information for the reviewing official, as a licensee is required to have the information reviewed before submittal of the fingerprints. The proposed rule puts the burden of review of fingerprint results on the regulatory body which will result in a resource burden. Commenters noted that it is unknown what the impact on Agreement States' resources will be to begin approving reviewing officials.

Response: After considering the comments, the NRC has decided to change the approval for the reviewing official. The NRC (or Agreement State) will no longer approve the reviewing official. The final rule adopts a similar process to what was in the Increased Control Orders. Each licensee will be required to provide the name of the reviewing official(s) to the NRC (or Agreement State) and certify, under oath or affirmation, that the reviewing official is trustworthy and reliable. By the licensee certifying under oath and affirmation that the individual is trustworthy and reliable, the NRC believes that it adequately addresses the good faith presumption concern. This certification occurs after the licensee has completed the background investigation for the reviewing official. The determination basis for the reviewing official is subject to inspection. If the individual has undergone fingerprinting and an FBI criminal history records check, a licensee can continue to use the trustworthiness and reliability official or the reviewing official used under the orders.

Comment B15: Many commenters objected to the need to grant the reviewing official access to the radioactive material or SGI. Many licensees have used Human Resources (HR) personnel to conduct the background investigations under the orders as they are the hiring experts for their companies. It was further noted that HR personnel would not have a need for unescorted access to category 1 and category 2 quantities of radioactive material. Licensees noted that this means that HR personnel are either prohibited from doing the access authorization or must be permitted access to the material or SGI. Further, commenters note that permitting HR personnel access creates possible radiation safety/security issues or creates an untenable business model for Increased Controls licensees with no evidence that the current system under the orders is flawed in any way. Some commenters noted that if it is the intent simply to have this person undergo the same level of scrutiny as those who would be given unescorted access, then the regulation should be amended to state as much. One commenter noted that the orders were quite emphatic that no individual should be granted access unless the individual actually needed access and that requiring the reviewing official to have access appears to reduce security. Several commenters noted that the workaround needed to require fingerprinting was an inappropriate approach and that NRC should complete the process of obtaining from Congress the authority to fingerprint the reviewing official. Commenters noted that the requirement is unduly restrictive on management options and an invasion of the rights to operate a business as they see fit. Commenters also noted that there may be other requirements surrounding unescorted access that could be implemented in the future and may not apply to the reviewing official that could cause hardships for licensees. While a few commenters were opposed to the requirement to have the reviewing official fingerprinted, most of the commenters did not object. One commenter noted that relying on someone to compile the information and have the reviewing official make the final decision also introduces the possibility of the individual compiling the information to act in a malevolent manner. One commenter suggested the following language: ''Reviewing officials must meet the necessary requirements to have unescorted access to category 1 or category 2 quantities of radioactive material.'' Two commenters noted that, if a reviewing official is granted unescorted access as a routine job requirement, the individual receive and satisfactorily complete radiation safety training required by the licensee.

Response: The NRC believes that it is essential that the individual that approves others for unescorted access to radioactive material undergo the same background investigation before approving individuals for unescorted access. The NRC needs to have confidence in the integrity of the reviewing official. The reviewing official is one of the layers for defense-in-depth of the security program. If the reviewing official exercises the permission for unescorted access to the material, the individual would need to undergo any required training, including any safety training, before actually having unescorted access. There are often individuals at facilities that have unescorted access permission but seldom exercise the permission. The language has been revised slightly to note that the reviewing official must be permitted unescorted access, and the phrase ''as part of their job duties'' has been removed. However, these individuals are not being required to physically access the material. The changes were made to better match the language in the AEA. The compatibility of § 37.23(b)(3) was changed to Category C to allow States to be more restrictive as it relates to access to the material. Some States may have authority to require fingerprinting by use of other mechanisms than the AEA.

Comment B16: Several commenters suggested allowing a reviewing official approve others to be a reviewing official as this would provide the licensee with more flexibility in assigning individual duties. Commenters noted that the restriction seemed arbitrary. One of the commenters noted that there was no reason why a reviewing official couldn't approve someone as there is no difference in the determination for a reviewing official and someone for unescorted access. Commenters noted that if this requirement was an attempt to maintain a list of reviewing officials it could be accomplished in a different manner.

Response: The NRC does not believe that the reviewing official should be allowed to approve another individual to be a reviewing official. While the background investigation is identical, the responsibility for the reviewing official is greater. However, under the final rule, a licensee is able to name its own reviewing officials. The existing reviewing official could be involved in the background investigation evaluation. *See also* response to comment B14.

Comment B17: One commenter suggested adding the word ''nominated'' before reviewing official in § 37.23(b)(5) because the person is not a reviewing official until approved by the NRC.

Response: The requirement for nominating a reviewing official has changed in the final rule. A licensee now names the reviewing official and certifies under oath and affirmation, to the NRC, that the reviewing official is trustworthy and reliable. *See also* response to Comment B14.

Comment B18: Two commenters objected to the wording in § 37.23(b)(4) and (5) that implies that the reviewing official permits unescorted access. The commenters agreed that the reviewing official should be the individual who makes the trustworthiness and reliability determinations but asserted that the reviewing official should not be the individual who gives permission for unescorted access. The commenters noted that after a positive determination is made, the actual determinations for

unescorted access should be controlled by someone else such as the RSO. The commenters suggested that the two sections be revised to remove the permit unescorted access language. The commenters also suggested that § 37.23(e)(2) be modified by changing the word ''permit'' to ''authorize.''

Response: The NRC agrees with the comment. The NRC has revised the language in § 37.23(b)(1) (formerly paragraph (b)(4)) to read: ''Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.'' The NRC has removed the provision in § 37.23(b)(5) as it was duplicative of paragraph (b)(4) (now paragraph (b)(1)). The NRC has not revised the language in § 37.23(e)(2) because permit is the term used in the AEA.

Comment B19: One commenter noted that § 37.23(b)(5) is redundant as § 37.23(b)(4) conveys the same requirement.

Response: The NRC agrees with the comment and has removed § 37.23(b)(5) from the rule.

Comment B20: Two commenters recommended that the reviewing official be allowed to authorize access to SGI.

Response: The reviewing official may approve individuals for access to SGI. Part 73 requires that a reviewing official conduct the background check review, but does not specify who that individual is or specify any qualifications for the position. A licensee can choose to use the same individual for both the SGI access under 10 CFR part 73 and unescorted access under 10 CFR part 37.

Comment B21: One commenter noted that licensees were allowed fingerprint exemptions based on submittal to other governmental programs, such as those to access Select Agents or government clearances. The commenter noted that these programs allow for licensee personnel to be trained to take the fingerprints but that the rule does not allow the reviewing official to be fingerprinted by the licensee personnel which will result in additional cost to travel to an authorized agency and fees to have the authorized agency take fingerprints. Two commenters noted that the requirement for the fingerprints of the reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints and that this seemed arbitrarily restrictive and was not a similar requirement for other individuals. The commenters also noted that 10 CFR part 73 did not contain a similar provision.

Response: The NRC disagrees with the comment. Because the reviewing official has extra responsibility in the access authorization program and will be making the determinations to allow access, the NRC believes that it is necessary for the reviewing official's fingerprints to be taken by an entity that will verify that the identification matches the person being fingerprinted. This ensures the identification of the individual submitting the fingerprints. Without this requirement the reviewing official could submit the fingerprints of another individual that is known not to have a criminal history or known terrorist ties.

Comment B22: Two commenters asked how a licensee will know if an appointed reviewing official has been approved. Commenters also asked how long the review would take. One commenter asked the NRC to describe the controls that will be in place to protect the personal information provided to the NRC on behalf of the prospective reviewing official. One commenter noted that the regulation does not indicate what the NRC will do with the fingerprints and how long the NRC retains personal information and the FBI data. The commenter wanted to know how long the FBI and NRC retain the fingerprints and personal information and who they can or will share that information with. Commenters were concerned how the transition period, before a reviewing official is approved, could impact a program. Some commenters questioned the length of time for NRC review.

Response: The final rule does not contain the provision for the NRC (or Agreement State) to approve the reviewing official. The only information provided to the NRC is the name of the individual and the fingerprints. The NRC typically does not retain the fingerprints and FBI results beyond 30 days. Either the cards are destroyed or the electronic file is deleted in accordance with Federal guidelines.

Comment B23: A few commenters indicated that the T&R officials under the orders would be grandfathered and become reviewing officials under the rule. Another commenter wanted to know what is meant by the statement that the already deemed reviewing official may continue to act in that capacity for an expanded set of persons, *i.e.,* what is classified as an expanded set of persons. One commenter recommended revising the rule to relieve reviewing officials who already have fingerprints on file from submitting fingerprints again.

Response: The NRC disagrees with the comment in part. The commenters have misunderstood the grandfather clause. The T&R officials would only be grandfathered if they had been fingerprinted under the orders for either unescorted access to the radioactive material or to SGI. If the T&R official has not previously undergone the fingerprinting and criminal history records check, he or she would need to complete the fingerprinting before making any additional determinations for access to material. The expanded set simply referred to those individuals, including new employees, who might newly require a background investigation.

Comment B24: Several commenters noted that both the NRC-Agreement State working group and the NRC staff steering committee developing the fingerprinting orders discussed at great length whether to require fingerprinting and background checks for T&R officials. Under the orders, T&R officials were not subject to the requirements. Commenters noted that they were not aware of any subsequent developments that would change the situation and now warrant requiring fingerprinting and background checks for reviewing officials now required under part 37. The commenters objected to what they called the appearance of an attempt to incorporate in rule a concept that did not have consensus and was not incorporated after going through the previous security orders working group process. They are opposed to requiring the reviewing official to undergo fingerprinting and a background check because in their opinion the requirements provide no plausible added benefit to the existing structure under the orders.

Response: The 10 CFR part 37 working group considered the order requirements, lessons learned, implementation issues, inspection issues, recommendations from other reviews, as well as the comments on the preliminary rule language. The 10 CFR part 37 working group determined that there was a potential gap with the individual approving others for access without undergoing the same background investigation. Requiring the reviewing official to undergo a background investigation addresses the good faith presumption. *See also* the response to question B5 in Section II.

Comment B25: One commenter objected to the timing of the submittal of the fingerprints for the reviewing official, noting that the approval process would be timelier if the fingerprints

were processed at the same time the licensee is conducting the other elements of the background investigation.

Response: The requirement for NRC approval of the reviewing official has been removed from the rule. The rule requires the licensee to certify that the reviewing official is trustworthy and reliable and to then provide the name of that individual designated as the reviewing official to the NRC. *See also* response to Comment B14.

Comment B26: One commenter noted that many of the items in subparts A through D do not reference SGI, but the requirements in this rule apply, and the inconsistencies must be corrected.

Response: The NRC disagrees with the comment. Requirements for protection of SGI are contained in 10 CFR part 73, not 10 CFR part 37. Part 37 contains appropriate references to the requirements for SGI that are contained in §§ 73.21 and 73.23.

Comment B27: One commenter requested that a section for a master materials licensee to approve reviewing officials at the permittee level facilities be added.

Response: The licensee is now responsible for approving the reviewing official. *See also* the response to comment B14.

Comment B28: One commenter noted that it was not clear how the licensee would comply with the requirement in § 37.25(a)(1) to complete fingerprinting and an FBI identification and criminal history records check for reviewing officials before granting them unescorted access inasmuch as NRC (or the Agreement State) would have the responsibility of reviewing the FBI identification and criminal history records check information, in lieu of the licensee doing so.

Response: The NRC (or the Agreement State) is no longer involved in the approval of the reviewing official. *See also* response to comment B14.

Comment B29: One commenter raised the issue of how individuals denied approval for reviewing official duties will be tracked to avoid going to another jurisdiction for approval.

Response: The final rule does not require the NRC to approve the reviewing official. The NRC does not plan a tracking system to track reviewing officials.

Comment B30: Two commenters requested information on what happens if the company appointed reviewing official is denied, particularly in smaller companies where the owner, manager, or RSO may be the appointed reviewing official and how such a denial might affect the operation of the company.

Response: The licensee is now responsible for approval of the reviewing official. The NRC is not involved in the decision. *See also* response to comment B14.

Comment B31: One commenter suggested changing the characteristics derived from the background investigation. The commenter stated that for the reviewing official to state that an individual is ''trustworthy and reliable'' implies more of an intimate knowledge of the characteristics of a person than would be gained from simply running the required checks. The commenter suggested that defining an individual as ''low-risk'' may be more appropriate.

Response: The NRC disagrees with the comment to change the rule. The NRC recognizes that determining that an individual is considered to be trustworthy and reliable is subjective, and not a guarantee that the individual won't ever commit, or conspire to assist others in committing, a malevolent act. The trustworthy and reliable concept is in the orders and is in other locations in the regulations.

Comment B32: One commenter suggested that, for those individuals who are relieved from the fingerprinting, identification, and other elements under § 37.29, the licensee should be exempt from the requirement in § 37.23(c) to provide informed consent and obtain a signed consent form. The commenter noted that it conducts a background investigation on all badge-holders (employees, fellows, contractors, etc), the vast majority of whom have no intent of applying for purposes of unescorted access and that there is no opportunity, or it is a misplaced opportunity, to request an individual's signed consent under this regulation at the point of background investigation initiation. The commenter stated that there should also be an exemption for this situation as there is no need to repeat the background investigation just because an individual later determines a need to request unescorted access. Other commenters questioned why an individual that has already been subject to fingerprinting now needs to provide consent.

Response: Section 37.23(c) states that the licensee does not need to obtain signed consent from those individuals who have undergone a background investigation under the orders or 10 CFR part 73. A signed consent is not necessary until the reinvestigation occurs. A licensee would not need to obtain a signed consent from an individual subject to § 37.29, unless the licensee conducted one or more of the elements of the background investigation.

Comment B33: One commenter questioned whether the NRC would develop a standard consent form and background questionnaire form so that everyone asks the same questions and evaluates on the same basis.

Response: The NRC has included a consent form in the guidance that could be used by licensees. A standard background questionnaire was not included as this would be similar to the information included in applications for employment. Information would include job history, education history, and a list of references.

Comment B34: One commenter stated that § 37.23(e) was improperly named as no basis for making a determination was included, only a requirement for licensees to develop, implement, and maintain written procedures with the determination basis that they deem appropriate.

Response: The NRC disagrees with the comment. The section contains the requirement for the reviewing official to make determinations on authorizing unescorted access, and the NRC believes that it is appropriately named. The licensee is provided flexibility in the criteria that it uses to make a determination.

Comment B35: One commenter stated that NRC should provide the specific and detailed adjudication criteria that will be used to approve the reviewing official.

Response: The guidance document contains the general criteria that the NRC used in approving reviewing officials under the orders. The specific criteria to be used are up to each licensee.

Comment B36: One commenter stated that licensees are not in a position and do not have the knowledge and skill to ensure that personnel are trustworthy and reliable and that all that licensees can be expected to do is to follow the NRC rule that was presumably written to provide licensees with methods to screen personnel.

Response: Licensees are required to follow the requirements in 10 CFR part 37 to acquire information about personnel and to make their own judgments of the trustworthiness and reliability of their employees. These determinations do not require specialized knowledge or skill and are similar to the determinations that licensees make in hiring decisions.

Comment B37: One commenter requested that § 37.23(e)(1) and (2) be revised to remove the requirement to review all of the background investigation information required in

making a determination on trustworthiness and reliability. The commenter felt that some of the information would be impossible to obtain and therefore, if you are required to review all information, a licensee could never approve some personnel. The commenter suggested that the language be changed to ''collected background investigation information.'' Several commenters suggested removing the term ''disqualifying'' from the paragraph as the NRC has not provided a list of disqualifying factors.

Response: The NRC agrees with the comment and has revised the rule to specify that the evaluation is of the information collected to meet the requirements. The NRC has also removed the term ''disqualifying'' from § 37.23(e)(2).

Comment B38: Two commenters noted that in § 37.23(e)(3) ''reasonable assurance'' is not defined. One of the commenters felt that the lack of clarity in this requirement and in what documentation should consist of will result in disputes with NRC inspection findings. One commenter objected to the need to document the determination basis for granting someone unescorted access. The commenter felt that only the reasons for denial should be documented.

Response: The NRC does not believe that ''reasonable assurance'' needs to be defined in the regulations. The determination basis is a performance-based requirement, and licensees are provided flexibility to develop criteria that best meet their needs. The NRC believes that documentation of the determination basis is essential. The documentation does not need to be extensive. It can consist only of an indication that no negative information was found during the investigation or an explanation of why negative information did not disqualify the individual. Without documentation an inspector could not be assured that the individual had actually undergone the required background investigation. Documentation of the basis is also beneficial to the licensee if it needs to reevaluate whether an individual should continue to have unescorted access.

Comment B39: Several commenters objected to the requirement in § 37.23(e)(3) to immediately remove the person from the approved list once he or she no longer require access. One commenter noted that ''immediately'' is not defined and that it is not realistic for routine terminations such as student graduations and deaths. The commenter indicated that the only justification for immediate removal would be demonstrated unreliability that would result in withdrawal of the person's trustworthiness and reliability status. The other commenter stated that immediate removal was not warranted but should be done in a timely manner. The commenter suggested replacing ''immediately'' with ''as soon as practical.'' Another commenter suggested removal from the list in a timely manner not to exceed 30 days after the determination.

Response: The NRC agrees with the comment in part. An immediate removal from the list is probably not necessary. However, prompt actions do need to be taken to prevent access, such as deactivating his or her access code. The NRC has revised the language to reflect that the action should occur as soon as possible but no later than 7 working days. The NRC believes that it is important to maintain a current list of those individuals that are allowed unrestricted access to the material.

Comment B40: One commenter questioned whether § 37.23(e)(3) means that the licensee must document its basis for approval of the trustworthiness and reliability determination as a written policy. The commenter noted that an alternate interpretation could be that the licensee must document a rationale for each individual's trustworthiness and reliability approval, as opposed to a generic basis for approval for all applicants.

Response: The licensee must document the rationale for each individual's trustworthiness and reliability determination. The documentation does not need to be extensive. The NRC notes that the orders also required the licensee to document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable.

Comment B41: One commenter stated that the access authorization program requirements were overly prescriptive, particularly the number of required procedures and amount of associated documentation. The commenter noted that the licensee should be allowed to determine the level of detail of its program as appropriate depending on the size and complexity of the program.

Response: The NRC agrees with the comment, in part, and has made some changes to the access authorization program. Section 37.23(f) has been revised to remove some of the specificity in the types of required procedures.

Comment B42: Two commenters noted that the requirement to have procedures to ensure that individuals who have been denied unescorted access authorization are not allowed access was redundant. The commenters stated that a person denied unescorted access would not be provided with a key or codes to access the sources, and a procedure is not needed.

Response: The NRC believes that procedures are necessary to implement the access authorization program. Not all licensees use keys or codes to control access to the material.

Comment B43: Two commenters stated that for licensees subject to 10 CFR part 73 with additional radioactive materials not covered by the 10 CFR part 73 security plan, the procedures used for 10 CFR part 73 background investigations and updating of background investigations, etc., should be considered adequate to meet the intent of 10 CFR part 37. One of the commenters suggested adding a new paragraph (5) to § 37.23(f) to read as follows: ''Procedures and policies meeting the requirements of the security plans required by part 73 meet the requirements of this subpart B of this chapter.''

Response: The NRC agrees that a licensee does not need to maintain two sets of procedures; however, a provision is not needed in the regulations. As long as 10 CFR part 73 procedure addresses the content of the required procedures under 10 CFR part 37, additional procedures are not necessary.

Comment B44: One commenter suggested that NRC develop a generic set of procedures for the conduct of background investigations as guidance for licensees.

Response: The NRC has not included generic procedures for conducting a background investigation. Implementation of background investigation requirements will vary with the circumstances of individual licensees. Guidance is available on the various elements.

Comment B45: One commenter stated that in § 37.23(g) at least 10 days should be allowed for an individual to correct, complete, or explain other components of the background investigation.

Response: The NRC has not specified a timeframe in order to allow licensees flexibility to choose a timeframe that they believe is appropriate for their program. The NRC has provided a 10-day timeframe to challenge the FBI criminal history records, and 10 days would be an appropriate timeframe for allowing a challenge of other aspects of the background investigation results. The licensee may choose the timeframe that works best for it.

Comment B46: One commenter noted that since § 37.23(g)(2) specifies that the licensee can't act on challenged

information until the FBI goes through their due process, the FBI needs to be on board. The commenter suggested adding a requirement to allow the licensee to make a final determination if nothing is heard from the FBI within 30 days.

Response: The rule contains procedures for an individual to correct background check information that are identical to the procedures in § 73.57(e)(2). The NRC disagrees that a 30-day cut-off period is needed because such a provision would circumvent an individual's right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Further, the 30-day cut-off period may be unreasonably short. The FBI has indicated that once it receives a formal challenge to an individual's record, a recheck is completed within approximately 3–4 weeks (52 FR 6310; March 2, 1987). Given the rule's 10-day window for an individual to initiate a challenge, the timeframe for resolution of challenges could potentially be greater than 30 days. Accordingly, the NRC declines to impose a 30-day time limit for challenges to an individual's background check information.

Comment B47: One commenter stated that § 37.23(h)(2) requires the licensee to retain a list of persons approved for unescorted access for 5 years after the list is superseded and noted that the word ''list'' implies a written document. The commenter asked if the ''list'' may include database records that contain unescorted access approval and removal dates and thus would allow discarding printed copies that are no longer useful. The commenter noted that other NRC regulations (*e.g.,* §§ 20.2110 and 37.51) allow records to ''be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period.'' The commenter recommended changing the wording to add similar wording as in other NRC regulations making it clear that the ''lists'' do not need to be printed copies.

Response: Section 37.101 already allows records to be maintained in electronic media. The language is similar to that provided in § 20.2110 and applies to all records that are required by 10 CFR part 37.

Comment B48: Two commenters objected to the requirement in § 37.23(h)(3) to maintain a list of individuals not approved for access. Two commenters objected to the need to maintain every change to the list for 5 years. One commenter felt that it would seem reasonable to ask that a list of all persons currently granted unescorted access be maintained (+ a month) and that a list of all persons denied or removed from the unescorted access list be maintained (± a month). Another commenter noted that maintaining a list has no value as a licensee may develop a badge system that indicates a person's level of access. Another commenter noted that there was no value in keeping a list since the determination basis has to be documented.

Response: The NRC agrees, in part, and disagrees, in part, with the comment. The NRC agrees that it is not necessary to maintain a list of those individuals not approved for access and has removed the provision. The fact that someone is not included on the access list means that they should not be granted unescorted access to the material, and a second list is not needed. There is currently no mechanism in place to share information among licensees, so there is no benefit in maintaining a list of those not approved for access. The NRC disagrees with the comment to remove the requirement to maintain every change to the list; however, the NRC has changed the retention time to 3 years. The superseded lists are necessary for inspections. If an inspector discovers something during an inspection, the superseded list could be reviewed to determine who had unescorted access during a given time period.

Comment B49: One commenter requested clarification whether the notification required by § 37.27(a)(2) is different from the informed consent required by § 37.23(c)(1).

Response: The informed consent under § 37.23(c)(1) is consent to conduct the background investigation. The notification required by § 37.27(a)(2) is specifically for the FBI criminal history records check. The licensee may develop one consent form that covers both aspects.

Comment B50: In the proposed rule, the NRC specifically invited comment on the appropriate elements for a background investigation. Commenters were requested to provide information on: (1) Whether a local criminal history review is necessary in light of the requirement for an FBI criminal history records check; (2) whether a credit history check provides valuable information for the determination of trustworthiness and reliability; (3) whether the Agreement States have the authority to require a credit history check as part of the background investigation; (4) the appropriate elements of a background investigation and why any suggested elements are appropriate; (5) whether the elements of the background investigation are too subjective to be effective; and (6) how much time a licensee typically spends conducting a background investigation for an individual. Twenty-seven commenters provided responses to the specific questions on this subject.

Of those who provided responses to the questions on the background investigation elements, no one supported inclusion of the local criminal history check as part of the background investigation elements and only one commenter indicated that the credit history check added any value. Most commenters indicated that the FBI criminal history records check was sufficient, and that requiring a local criminal history check was redundant and overly burdensome. Many commenters noted that conducting a local criminal history check would be very difficult for foreign nationals and those who have moved frequently. Most commenters stated that the credit history evaluation was not useful, and that poor credit and untrustworthiness do not go hand-in-hand. Commenters were also concerned that there were no clear guidelines on what credit score would be cause for concern. Many commenters expressed concern over the accuracy of information in credit histories. Some commenters questioned whether requiring a credit history check was legal in some States, noting that the requirement was an invasion of privacy. One commenter suggested Social Security number (SSN) validation instead of the credit history check.

In response to the question of whether the Agreement States have the legal authority to require a credit history check, most commenters indicated that they did not know. One State responded that recent legislation prohibits discrimination based on credit history, but did note that the law provides for exceptions. One State indicated that it did have authority, and another noted it did if specific criteria were provided.

The majority of commenters indicated that the current background investigation elements from the orders were adequate. One commenter suggested as appropriate elements: Verification of legal citizenship, personal references, former employers, education, fingerprinting and FBI criminal background investigation, and personal knowledge. Another commenter noted that the elements should be employment history, education history, reference check, and FBI history check. Two commenters noted that the background investigation should be limited to the fingerprint-based criminal history check, and that an adverse criminal history could be mitigated by satisfactory employment history with the licensee. One

commenter suggested a two-person rule for truly significant sources instead of a background check. One commenter indicated that the area that needed review is the background investigation for foreign nationals and students because the required information is troublesome to obtain.

Most of the commenters felt that the elements of the background investigation were too subjective, and that guidance or criteria were needed so that the elements could be consistently applied across the country with minimum second guessing by auditors and inspectors. Other commenters stated that while the elements were subjective, this did not mean that they were ineffective. Commenters stated that there is a good mixture of subjectivity and objectivity for the reviewing official to use in making a determination of a person's trustworthiness and reliability. One commenter noted that some subjectivity is necessary to evaluate the situation and the individual, as strict adherence to guidelines could lead to rejection and a serious impact on an applicant's career.

NRC also requested information on how much time a licensee spends conducting a background investigation. Responses varied from a few hours to months; the longer times typically included wait times and not actual effort.

One commenter suggested centralization of the background investigation process, suggesting that the security clearance process performed by the Defense Industrial Clearance Security Offices for various Federal agencies could be tailored to meet the 10 CFR part 37 requirements. The commenter indicated that this could be more efficient than requiring each licensee to develop a process.

In addition to those who provided responses to the specific questions, 70 commenters addressed this topic. Several commenters felt that the current background investigation elements were sufficient and questioned the value of the proposed additional elements (credit history evaluation, verification of true identity, military history verification, and criminal history review from local criminal justice resources). Some commenters felt that specific justifiable evidence that current trustworthiness and reliability programs aren't working is needed to justify any new requirements, and that a cost-benefit analysis should be used to justify inclusion of any new elements. Several commenters noted that the cost of obtaining the necessary information may be burdensome in time and money, and that the requirements are overly prescriptive. Commenters expressed concern that the required checks could result in lost jobs if individuals did not meet the standards set forth by the licensee. One commenter noted that a licensee would probably investigate the individual before hiring, which would result in multiple expenditures for one eventual employee. One commenter noted that the background investigation could deter some talented and knowledgeable professionals from applying due to the potential invasion of privacy. One commenter noted that the NRC needs to find the fine line between cautious and correct and overly cautious and burdensome.

Some commenters felt that the FBI criminal history checks and work history are sufficient. Two commenters felt that the background investigation should only require a fingerprint-based criminal history check and that adverse criminal history may be mitigated by the employment history of an employee with more than 3 years employment with the licensee. Commenters noted that employment history is far more accurate for determining trustworthiness and reliability than any other check proposed. One commenter suggested allowing licensees to use a graded approach taking into consideration multiple variables, such as: Whether the activity is category 1 or category 2; the desirability of the source to an adversary; the physical security present; how quickly the radioactivity could be removed from the device and readily dispersed or used to cause serious harm; the mobility of the source or device, and the frequency of physical inspection/observation by more than one individual. One commenter suggested revising the requirement so that the licensee could use either employment history evaluation, verification of employment, or military history evaluation. At least one commenter noted that the insider threat would be best controlled with monitoring and detection.

Sixty commenters objected to the inclusion of the credit history element in the background investigation. Commenters noted that, in the current economic environment, a credit history evaluation could reflect an inaccurate and erroneous assessment of a person's trustworthiness and reliability and could result in some skilled individuals being removed from employment consideration. Commenters felt that the credit history check was an unnecessary invasion of privacy, and that most individuals would choose not to pursue unescorted access if faced with a credit history check. One commenter noted that when implementing the orders it had initiated a credit history evaluation that created a significant uproar and resulted in several researchers withdrawing their irradiator access privileges. The commenter noted that this created an atmosphere of distrust. Commenters felt that the information was not relevant when attempting to determine trustworthiness and reliability and was unjustified and not a valid gauge of trustworthiness and reliability. Commenters noted that having a bad credit history did not make the individual untrustworthy and that a good credit history did not define an individual as trustworthy and reliable. Some commenters requested that the NRC provide some study or peer reviewed document that demonstrates that persons with poor credit may be more easily coerced into helping terrorists. Some commenters stated that the requirement could potentially be viewed as discriminatory by workers. One commenter questioned how to deal with identity theft.

Commenters noted the difficulty of obtaining a credit history of individuals who have lived outside the United States, such as foreign nationals. Commenters noted that in some cases it was impossible to obtain the information. Commenters noted that many countries do not have a combined credit history reporting agency. One commenter expressed concern that individuals who have established a credit history in the United States and whose credit history is poor will be at a disadvantage over individuals with a similar but undocumentable credit history in another country, as an employer may choose to allow access to the foreign national based on incomplete information and deny access to a United States citizen based on more extensive but unfavorable information.

One commenter noted that Title 11 of the United States Code, Section 525, makes it illegal to discriminate against employees or job applicants solely because of filing for bankruptcy. Another commenter noted that the Equal Employment Opportunity Commission has been cracking down on efforts to disqualify potential hires with bad credit history as the practice can be discriminatory. Several commenters noted that some States have laws that prohibit employers from discriminating against employees on the basis of credit history and prevent employers from inquiring about credit history. One commenter stated that if Congress, in consultation with the NRC, had deemed credit history checks significantly useful to provide for the common defense, the checks would have been included

within the most recent amendments in section 149 of the AEA. Another commenter noted that Congress has considered passing an act to make it unlawful to base adverse employment decisions on consumer credit reports.

In a CRCPD survey of Agreement States, 70 percent of those responding indicated that they did not have the authority to require a credit history check as part of a background investigation. Some Agreement States indicated that they were not sure if they had the authority to require a credit history check. One State indicated that (assuming it has authority) its administrative procedures would require specific criteria for pass/fail. One commenter noted that there are State laws that prohibit ''discrimination'' against employees due to credit history and asked how this would affect the credit history check requirement. The commenter noted that a Google search indicated that States that have and/or are considering such laws include: Connecticut, Wisconsin, Hawaii, Illinois, Missouri, New York, Oregon, Washington, and Texas.

One commenter felt that much of the information obtained from a credit history report would already be included in the personal history disclosure. Two commenters stated that for category 2 sources it should be up to the reviewing official to decide if they have enough information to grant unescorted access to a category 2 source without the need for a credit history check. One commenter noted that individuals relieved from the background investigation elements were just as likely to have negative credit history but will not be subject to the same scrutiny. One commenter recommended defining ''full credit history,'' as a licensee can't comply with open-ended requirements. Two commenters noted that this concept had been considered in the working group for the orders but was rejected, and, therefore, should not have been included in the proposed rule.

Several commenters opposed the inclusion of the criminal history check in the background investigation. They questioned why a criminal history check from local sources was necessary if a national check through the FBI was conducted. One commenter stated that the local check would be an added benefit if the FBI check was somehow inadequate. Commenters stated that the information would be difficult to obtain in many locales and would be an increased burden to both the licensee and local law enforcement without a corresponding benefit. Commenters also noted that the information would be impossible to obtain for foreign nationals, and that a provision must be provided that allows less-than-absolute compliance. One commenter noted that licensees in rural areas may have limited access to local resources, and that some local resources may have limited capabilities to respond to such requests. Commenters asked how to determine the appropriate local law enforcement agency and what constituted local.

Several commenters objected to the inclusion of a character and reputation element in the background investigation. Commenters felt that the determination would be very subjective, added little value, and unnecessarily added to the licensee's burden. Commenters noted that an adverse judgment about an employee's character and reputation could be perceived as discriminatory. One commenter suggested removing the term ''trustworthy and reliable'' from the character and reputation element and thereby removing the connotation that a personal reference can attest to the present state of an individual's trustworthiness or reliability. The commenter noted that including a character and reputation check would require references to be knowledgeable about that definition, and very few references can attest to the present status of an individual, as required by the words ''continues to be.'' Some commenters expressed concern over possible invasion of privacy. One commenter recommended requiring a minimum of three references. One commenter noted that, for a reference to provide a worthwhile evaluation of the applicant, a minimum time frame for contact with the individual should be established in the rule. The commenter also cautioned that the reference should not be from someone, such as a supervisor, who may benefit from the applicant's unescorted access.

Several commenters objected to the requirement to obtain independent information to corroborate the information provided by the individual. Commenters stated that the provision was vague and unreasonable, and they did not understand how it could be accomplished. Commenters stated that it was unreasonable to expect licensees to track down independent information, as they are not investigative agencies. Commenters noted that many entities cannot or will not provide background information, and licensees do not have the resources to obtain information elsewhere. Commenters noted that the cost would be prohibitive in many cases. One commenter recommended removing the phrase ''to the extent possible'' because it made the section meaningless. One commenter asked what he or she should do if it is not practicable to confirm information. Another commenter stated that the documentation would be excessive and time consuming. One commenter suggested requiring independent information only in situations where the accuracy or completeness of information provided by the applicant is in doubt, or where the licensee can't confidently make an evaluation based on an analysis of all of the gathered information. One commenter suggested changing the phrase ''to the extent possible'' to ''to the extent practicable.'' Three commenters objected to the need to obtain information from an alternate source when a previous employer or other entity does not respond. One commenter noted that where a company has gone out of business, it would be impossible to obtain confirmation that the individual worked at the company. The commenters felt that it was unclear how a licensee could obtain this information in some cases. One commenter noted that it doesn't have the resources to confirm an applicant's information independently, particularly if the person's family is excluded.

Commenters noted that obtaining the information for some groups of people, (*e.g.,* foreign nationals, research students, and citizens who have resided outside the United States for long periods), is difficult or impossible. Some commenters noted that licensees with a high turnover, such as universities and research facilities, would incur substantial cost and would have difficulty implementing the provisions. One commenter provided some cost information, noting that the current cost is $131 per applicant, excluding the $100 average cost for processing new employees. The costs included $25 for fingerprinting, $26 for fingerprint processing through the NRC and FBI, and $80 for a WorldScan. The commenter noted that adding the credit history and military history would increase the cost per approved person to $155 for United States records, and even if the credit history and military records were obtainable and reliable, getting this information on foreign applicants would be prohibitively expensive. Two commenters noted that a foreign credit history check costs $170, and one commenter noted that that a credit check would cost $1,000 per individual for a foreign national, and another said that the cost of military verification was $80 per person. Another commenter noted that the current cost of conducting background investigations

was $125, and adding a credit check and military records check would increase this to $400 per person (assuming that half the individuals require foreign credit checks). One commenter noted that it would take 2 to 3 person-days to perform the different checks.

Several commenters recommended that NRC consider using the same background check process used by the Centers for Disease Control (CDC) for select agents because centralized NRC coordination would probably result in more consistent evaluations at reduced cost. Other commenters suggested that the NRC authorize unescorted access using a method similar to the Transportation Safety Administration's TWIC program. They noted that the CDC and the U.S. Department of Agriculture programs for select agents and the DOT system for issuing hazardous material certifications for Commercial Driver's Licenses, all have the applicable Federal government agency perform the reviews and grant the approvals. The commenters stated that this approach would provide consistency in the conduct of the reviews and would best assure that all needed information is collected and reviewed by well-trained individuals. One commenter suggested that the NRC review the visa process to see if any of the requirements could be replaced with a verification of visa, since foreign nationals must go through a Homeland Security review to get a visa. One commenter noted that it has reviewed 3,182 persons since the Fingerprint Order was implemented and has determined that 38 could not be judged trustworthy and reliable based only on the FBI criminal history report and not because of any other background investigation elements. The commenter noted that more than 90% of the persons it judged to be trustworthy and reliable were also judged trustworthy and reliable by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), and that this experience appears to validate why all other federal agencies that perform similar checks do so solely on the basis of the FBI criminal history.

One commenter noted that his or her industry is subject to three different Federal background check programs (BATFE, DOT, and NRC), and recommended that the agencies come up with one background check that would satisfy all three.

Response: The NRC has determined that the appropriate elements of the background investigation include: Fingerprinting and an FBI criminal history records check, verification of identity, employment history verification, education verification, and a character and reputation determination. Many of these items are part of routine employment checks that an individual may go through before being hired by a company. The NRC has removed military history verification from the elements as it is considered part of the employment history and does not need to be a separate element. The NRC has also removed the provision to conduct a local criminal history check as part of the background investigation. The NRC determined that while the local criminal history check would provide some beneficial information, the burden of obtaining the information is not justified by the limited benefit. The NRC recognizes that conducting the background investigation for some individuals, such as foreign nationals, may be difficult. If there was no education or military service in the 7-year period preceding the need for unescorted access to the material, the investigation would not need to include these items.

After careful deliberation and consideration of all the comments received on including credit history as a background investigation element, the NRC has decided not to include credit history as a required element for the background investigation or reinvestigation. The credit history can provide information that is useful in making a determination that an individual is trustworthy and reliable. Credit history can add an extra layer of defense in mitigating the insider threat and can provide some information that is not easily available from other sources. Credit history was never intended to be the determining factor for trustworthiness and reliability but simply one more piece of information in making that determination. However, as many of the commenters pointed out, there are issues with the accuracy of credit reports, and a poor credit history is not necessarily an indicator that an individual is not trustworthy or reliable, particularly in these tough economic times. Although NRC disagrees, some of the commenters indicated that there is the potential that some Agreement States might not be able to implement the provision due to State laws. These things could result in uneven implementation of the provision across the country. As pointed out by the commenters, it is harder and more expensive to obtain a credit history for those that have resided in other countries for long periods of time. This could lead to an imbalance in the information collected and used in making the trustworthiness and reliability determination. In addition, some licensees may decide not to grant unescorted access to fully qualified individuals because of the lack of information or the difficulty in obtaining the information. Many smaller licensees may not have staff and/or knowledge to be able to fully utilize the information obtained from the credit history. The NRC has determined that the potential benefit of the credit history is not justified by the cost and, therefore, the NRC has not included credit history as a required element of the background investigation. While not requiring a credit history, the NRC does note that information obtained from the credit history could be useful to licensees, and nothing in the NRC regulations prohibits a licensee from conducting a credit history. In situations where a trustworthiness and reliability determination is difficult, the information from a credit history could provide the determining information. A licensee can always use measures beyond the regulatory minimum that is required by the access authorization program.

The NRC is not providing specific criteria that would disqualify an individual from obtaining unescorted access to the material. There is no checklist. Because the individual circumstances of each applicant may vary significantly, each licensee needs the flexibility to establish its own program. The implementation guidance document does provide general information and items for consideration, but no specific disqualifying information. A licensee should consider any negative information together with all of the other information in making a final determination.

At this time, the NRC has no plans to establish a new program to conduct background investigations similar to the TSA or CDC programs. The NRC does relieve individuals who have been approved under these programs from the fingerprinting element of the background investigation.

Information provided by the commenters on the burden of conducting a background investigation has been factored into the final regulatory analysis, as appropriate.

Comment B51: One commenter expressed concern that the new requirements could force employment decisions based on incomplete information and that this could lead to significant legal implications for the facility. The commenter noted that the intersection of these requirements with the Equal Employment Opportunity Act should be investigated.

Response: The NRC does not agree that the background investigation

requirements force licensees to make employment decisions based on incomplete information. Individuals who are granted unescorted access to category 1 or category 2 quantities of radioactive material must be deemed trustworthy and reliable. The background investigation is one component designed to provide the licensee with sufficient relevant information before making this determination. It is the licensee's responsibility to evaluate the information received as a result of the background investigation and all other relevant information to make its trustworthiness and reliability determination. These requirements do not relieve a licensee from its obligation to comply with all applicable Federal and State labor laws. Further, the NRC does not believe that fulfillment of these trustworthiness and reliability determination requirements would cause the licensee to violate any labor laws. Accordingly, the NRC does not believe that it is necessary to develop guidance on this issue.

Comment B52: Two commenters questioned the 10-year period for the background investigation versus the 3-year period contained in the orders. The commenters felt that 10 years is an arbitrary timeframe and that 3 years is sufficient. One of the commenters noted that going back 10 years is more expensive and that it is more important what happened in the last few years of the person's life and not distant history. Another commenter suggested changing the timeframe to 7 years as the standard criminal history and credit checks only go back 7 years. The commenter noted that many States charge an extra fee to extend the check beyond 7 years. One commenter noted that there could be a problem when attempting to use the 10 year criteria for students. Another commenter asked for clarification for how far back the investigation should go and what sources could be used. One commenter noted that the employment history evaluation period of 10 years was not consistent with 10 CFR parts 26 and 73 which only cover the most recent 3 years and that justification should be provided for going with 10 years. One commenter suggested going back the last two employers or 10 years whichever is less restrictive. One commenter stated that the timeframe should be left to the discretion of the licensee based on the situation of the applicant. One commenter felt that 10 years was too long an evaluation period and that there was no stopping point to the 18th birthday. The commenter recommended changing the 10 years to 3 years or until the person's 18th birthday, whichever is shorter. One commenter requested that NRC clarify the date used to determine the 10-year reinvestigation. One commenter noted that the rule needs to be clear that the expectation for the review is to go back 10 years or to such time as the individual was a minor.

Response: The NRC has reconsidered the time frame for the initial background investigation and has changed the timeframe to 7 years as suggested by the commenters. This may reduce the cost of the investigation. The rule does provide that the investigation only goes back to the individual's 18th birthday.

Comment B53: One commenter noted that the rule did not provide a tiered approach for individuals who had been with the licensee for greater than 3 years. The commenter noted that under the orders the licensee could review the individual's employment history (*i.e.* personnel files) and obtain the supervisor's standardized recommendation. The commenter recommended retaining this system for the initial and reinvestigation for individuals who have been with the licensee for a long period of time (*i.e.* 10 years).

Response: The NRC disagrees with the comment. The NRC believes that the longer timeframe is appropriate. If the individual has been with the company for 7 years, the licensee would not need to check with previous employers. The reinvestigation does not include all of the elements of the initial background investigation.

Comment B54: One commenter requested clarification on whether the licensee verified the true identity of individuals or the licensee's reviewing official. The commenter also objected to the language in the rule to verify ''true identity'' and ''ensure'' the individual is who he or she claims to be. The commenter felt that making it the licensee's responsibility to establish anyone's ''true identity'' is not always possible as identification documents (IDs) can be forged, and very few licensees are experts at identifying forged documents. The commenter felt that the language is too strong, cannot be guaranteed, and needs to be rewritten to just state that the licensee is responsible to review the identification documents. The commenter also stated that the requirement to compare the personal information data to identify any discrepancy in the information is too vague. The commenter asked what personal information and what should be done when discrepancies are discovered. The commenter suggested that the language be revised to require that the licensee review available information from an ID that is provided to the licensee by the applicant, and resolve any discrepancies. One commenter asked how verification of true identity was supposed to be done and questioned the expense and value. One commenter noted that it already performed an I–9 or E-verify for employees but not in the case of students at universities.

Response: The licensee is not expected to determine that an ID has been forged. Section 37.25(a)(2) states that the licensee is to review the identification documents provided, such as a driver's license or passport, to make sure that the information matches what was provided by the individual. If the information such as the name of the individual or social security number doesn't match, the licensee should investigate further. E-verify is one tool that can be used. The guidance document on the rule contains information on how this provision should be addressed.

Comment B55: One commenter suggested that the requirements to verify employment history, education history, and military history were too rigid and that the language should be revised to ''the licensee shall attempt to verify * * *'' The commenter noted that this would recognize that businesses fail and overseas employers and schools may be impossible to contact. The commenter indicated that the unsuccessful attempts should then be documented. Another commenter noted that it could be very expensive to verify foreign employment.

Response: The NRC agrees in part with the comment. Section 37.25(a)(7) (previously (a)(10)) already contains a provision for when an employer or other entity doesn't provide any information. The provision had been modified to provide additional clarification and to add a requirement that the licensee document the actions taken when it is unsuccessful in verifying the history.

Comment B56: One commenter questioned the relevance of obtaining military history and how the results would be used. The commenter stated that NRC should perform this service for foreign nationals. Another commenter noted that military history verification can be a lengthy and difficult process. The commenter noted that obtaining records from the Department of Veterans Affairs was difficult, particularly for Korean and Vietnam era veterans, and compliance is dependent on another Federal agency. One commenter noted that in some countries military service is a requirement of its citizens so verification has little bearing on an individual's trustworthiness and

reliability. Another commenter noted that the return rate for requests on military history has been about 20 percent and takes between 3–6 months. Commenters do not believe that this adds any value. Another commenter questioned how to obtain military history verification.

Response: Military history is considered part of the employment history. The rule text has been revised to include military history as part of the employment history instead of a separate element. For some individuals, military service could be their only employment. The licensee only needs to verify the service if the military service occurred in the last 7 years. Information on foreign nationals can be more difficult to obtain. The NRC notes that licensees always have the option of escorting the individuals. Additional guidance on foreign nationals is provided in the implementation guidance.

Comment B57: One commenter questioned the value of verifying education history and questioned how the verification should be accomplished. Another commenter questioned how far back a company needed to go for someone employed at the company for 10 years. One commenter noted that the verification should be for the degree and not the time period of attendance. The commenter noted that it would be a huge burden to verify every time period at every institution for those who completed their education over numerous years at various institutions.

Response: Education history is similar to employment history and helps to validate what the individual was engaged in during the noted timeframe. Education history would typically be verified by checking with the educational institution. Education history only needs to be verified if it occurred in the last 7 years.

Comment B58: Two commenters felt that the employment history was completely ignored as the rule did not provide for limiting the background investigation to the FBI criminal history check for employees with more than 3 years with the licensee. The commenter noted that employment history is a factor that can be used when determining whether an employee with a criminal history is trustworthy and reliable. One of the commenters felt that employment history is a far more accurate set of data for determining trustworthiness and reliability than any other check proposed and that the employment history should not be ignored.

Response: Employment history was not ignored by the NRC and it is one of the elements of the background investigation. The NRC agrees that employment history can and should be used when considering the information obtained during the background investigation. The licensee has the flexibility to determine how much weight to give each element of the background investigation.

Comment B59: One commenter noted that it was impossible to verify employment if the individual has never worked before.

Response: Part 37 specifically requires that the licensee verify the individual's employment with each previous employer for the most recent 7 years before the date of application. If an individual has never worked before, there is no previous employer and no employment to verify. For this individual, no employment verification would be required.

Comment B60: One commenter questioned what was meant by the claimed period and indicated it should be defined in the rule.

Response: The NRC disagrees that claimed period needs to be defined in the rule. The claimed period is simply the period of time for which the individual indicates that they were engaged in a particular activity such as attending college, being a member of the military, or working for a company.

Comment B61: One commenter asked for the definition of ''timely manner'' for when an entity refuses to respond during a background investigation.

Response: The rule itself does not use the term ''timely manner.'' The rule indicates that within a timeframe deemed appropriate by the licensee but at least after 10 business days of the request.

Comment B62: One commenter objected to the language in response B8 in the Statements of Consideration indicating that licensees should use their best efforts to obtain background information. The commenter noted that best efforts can't be enforced and must be clearly defined. The commenter also objected to the concept of dependable in judgment, character, and performance and noted that this must be reduced to something quantifiable and enforceable and not subject to disparate interpretations.

Response: The NRC disagrees with the comment. The NRC believes that the concept of best efforts in this context is necessary because sometimes it is impossible to obtain information. Companies going out of business and entities refusing to provide information or not getting back to the licensee are examples of situations where the licensee's best efforts will suffice, as long as the licensee documents the efforts taken to obtain the information. The NRC understands that judgment and character are subjective items. Licensees make determinations on judgment and character every time they hire someone or trust an individual with company assets.

Comment B63: One commenter stated that the NRC should ensure that the FBI check includes checks against known terrorists or denied entity lists.

Response: In addition to a criminal history records check, the names and fingerprints sent to the FBI are checked against various terrorist watch lists.

Comment B64: One commenter requested clarification on whether the fingerprints and associated criminal history records check was part of the background investigation conducted by the licensee since the FBI does the check and not the licensee.

Response: The background investigation includes the collection and review of all the information submitted by the applicant and any information provided by outside sources upon the licensee's request. While the actual criminal records check is conducted by the FBI upon receipt of an applicant's fingerprints, the results of the FBI's check are returned to the licensee, and that information should be reviewed as part of the licensee's determination of an individual's trustworthiness and reliability.

Comment B65: One commenter requested clarification on whether the background investigation elements could be outsourced by licensees to a third-party verification service. Another commenter requested clarification on whether some elements of the background investigation could be performed by HR personnel and have them certify what steps had been taken.

Response: The background investigation elements could be outsourced. However, the final determination must be made by the licensee's reviewing official. If the investigation elements were outsourced, the licensee would need to assure that the information was properly protected and controlled.

Comment B66: One commenter expressed support for grandfathering individuals already allowed unescorted access under the orders. One commenter recommended that the grandfathering provision also include those individuals determined trustworthy and reliable under 10 CFR part 73.

Response: The NRC agrees that those individuals deemed trustworthy and reliable under 10 CFR part 73 should be

grandfathered or relieved from the fingerprinting and background investigation elements. Those individuals who have been deemed to be trustworthy and reliable under other security fingerprinting orders (such as those for fuel cycle facilities and independent fuel storage installations) should also be grandfathered. The NRC has revised the rule to provide grandfathering for those individuals.

Comment B67: Two commenters questioned the value of the 10-year reinvestigation. They felt that conducting a complete check again makes no sense if the employee has worked for the licensee that long. One commenter recommended removing the reinvestigation, or if it is retained, making it simpler, such as a local criminal history check and supervisor evaluation. One commenter stated that the reevaluation needed to include character and reputation determinations. The commenter noted that changes in a person's attitude or demeanor can indicate a change in circumstances that warrants restricting access, whereas there may have been no change in a credit or criminal history. Two commenters recommended using the FBI background check for the 10-year reinvestigation. One commenter asserted that, if there are no indicators that something has changed, the FBI check should be adequate for a reinvestigation. The commenter noted that employees are typically evaluated by their employer at least annually, and this provides ample opportunity to ensure that there have been no changes negatively affecting security concerns. One commenter noted that § 37.25(c) suggests that only a criminal history records check and credit history check are needed, and this implies that trustworthiness and reliability is not sufficiently demonstrated by 10 years' worth of access without an incident to revoke the individual's unescorted access. The commenter stated that the reinvestigation requirement seemed overly draconian, given that the federal Office of Personnel Management (OPM) standard for background investigations only requires a reinvestigation for a security level higher than even an NACIC—and the OPM reinvestigation is required only every 15 years. The commenter also asked for clarification on whether the relief provided by § 37.29 applies to the reinvestigation. The commenter also requested clarification on when the 10-year reinvestigation is triggered. One commenter stated that reinvestigation requirement does not make sense as there would be insufficient information on whether the criminal history will really be the criminal history or just an arrest record.

Response: The NRC believes that periodic reevaluation of an individual's trustworthiness and reliability is important. The reinvestigation is not a complete check. The reinvestigation is limited to the FBI criminal history records check. The relief provided by § 37.29 does apply to the reinvestigation. The licensee would need to check that the individual still meets the relief category.

Comment B68: One commenter questioned whether the reviewing official was subject to the reinvestigation requirement.

Response: The reviewing official is subject to the reinvestigation. The rule text has been revised.

Comment B69: One commenter stated that §§ 37.25 and 35.27 have some duplication of information and that sections should be reviewed to avoid duplication.

Response: There is some overlap in the requirements. However, the provisions of § 35.27 apply solely to the fingerprints and FBI criminal history records checks. The provisions of § 37.25 apply to the complete background investigation.

Comment B70: One commenter noted that there is potential for discrepancy between different licensees' basis determination for unescorted access and questioned the wisdom of allowing transfer of an individual's trustworthiness and reliability determination under § 37.27(a)(4).

Response: The commenter is correct that there may be differences between licensees' determination bases for unescorted access. The NRC still believes that there is merit in allowing licensees to transfer information and accept another licensee's determination on an individual. The individual has undergone a background investigation (or met one of the categories for relief) and been determined to be trustworthy and reliable. If the second licensee has reason to doubt the determination or does not feel comfortable relying on the first licensee's determination, the licensee is not obligated to allow the individual unescorted access. The licensee could also decide to conduct its own background investigation before allowing the individual unescorted access.

Comment B71: One commenter questioned the language in § 37.27(a)(6) that limits use of information obtained as part of the criminal history records check (from the FBI) to determining an individual's suitability for unescorted access to the material or SGI. The commenter felt that if the information indicated that an employee lied on an employment application, the licensee should be able to fire the individual based on this information.

Response: The NRC disagrees with the commenter's suggestion that § 37.27(a)(6) be deleted. The language in § 37.27(a)(6) of the proposed rule implements the statutory requirement set forth in section 149c.(2)(B) of the AEA, 42 U.S.C. 2169(c)(2)(B). Information obtained from an FBI criminal history check shall be used by licensees solely to make suitability determinations for unescorted access to category 1 or category 2 quantities of radioactive material, or access to SGI. Information which pertains to the trustworthiness of an employee obviously is pertinent to a suitability determination. With that said, the NRC does not make employment decisions for the regulated community.

Comment B72: One commenter stated that the requirement in § 37.27(b)(1) prohibiting a licensee from basing a final determination to deny an individual unescorted access solely on information received from the FBI is inconsistent with the intent of the rule to protect the public from category 1 and category 2 radioactive sources. The commenter questioned how a responsible licensee could not use information provided by the FBI to restrict a terrorist from access to these sources.

Response: The prohibition on using information received from the FBI only involves information on an arrest more than a year old for which there is no information on the disposition of the case or an arrest that resulted in the dismissal of a case or an acquittal. The licensee may still consider the information, but it cannot base its decision solely on the information. If there is no disposition of the case in the file, the individual may have been acquitted of the charge, and an acquittal is information that would be pertinent to the decision to grant unescorted access.

Comment B73: One commenter stated that a licensee would need to have in-depth knowledge of constitutional law to understand the requirement in § 37.27(b)(2) that prohibits a licensee from using the information from a criminal history records check obtained under 10 CFR part 37 in a manner that would infringe upon the rights of any individual under the first amendment of the Constitution. The commenter noted that NRC should not be proposing any regulation that will be unconstitutional or be apt to be used to infringe on the rights of workers.

Response: The NRC disagrees with the commenter's suggestion that § 37.27(b)(2) be deleted. The NRC is not proposing a regulation that is unconstitutional or that infringes on the rights of any individual. This provision implements section 149c.(2)(D) of the AEA, 42 U.S.C. 2169c.(2)(D), which provides that the NRC is to protect individuals subject to fingerprinting from misuse of criminal history records. The onus is on the licensee, not the NRC, to ensure that the information it obtains as a result of an FBI criminal history records check will have limited use, and be used in accordance with all applicable Federal and State laws.

Comment B74: One commenter stated that the licensee should be allowed to submit fingerprint cards to the FBI. The commenter noted that submittal of fingerprint cards to the NRC is cumbersome, time-consuming, and apparently done only to provide an additional revenue source to the NRC. The commenter noted that it had experienced NRC losing one set of fingerprint cards. Another commenter noted that the rule does not allow licensees with a fully-accredited program to do their own collection and transmission of fingerprints to the FBI. The commenter requested an exemption to this restriction for licensees who possess a fully-accredited program.

Response: The NRC cannot exempt a licensee from the statutory requirement to submit fingerprint cards to the Attorney General of the United States through the Commission, even if that licensee possesses a fully-accredited program to collect and transmit fingerprint cards to the FBI. Section 149 of the AEA states that fingerprints obtained by an individual or entity must be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. Consistent with the statutory requirements, a licensee is required to submit fingerprint cards to the NRC. The NRC will then submit the fingerprint cards to the FBI for processing and transmit the results received back from the FBI to the licensee.

Comment B75: One commenter stated that the fees for fingerprint processing should be placed in the regulations instead of a reference to the Web site.

Response: The NRC disagrees with the comment. The fees change based on what the FBI charges. If the fee was placed in the regulations, it would require the NRC to conduct a rulemaking every time the fee changed. By placing the current fee information on the Web site, it can be changed quickly when necessary.

Comment B76: Two commenters stated that § 37.29 should be deleted and that there should not be any categories of individuals that are provided relief from the background investigation elements. One of the commenters noted that any person entering a facility and having unescorted access to or transporting category 1 or category 2 quantities of radioactive material should be fingerprinted, without exemption or relief. The commenter stated that given the significance of theft of such material and the cost of dispersal of such radioactive material outside a controlled area, the cost and very minor use of time for fingerprinting is totally insignificant. The commenter noted that there are many examples of Congress or other persons who have been fingerprinted and who have broken criminal or other law and, therefore, should not be exempted. The commenter noted that fingerprinting is required in many situations not involving threats to national security or dispersal of radioactive material in public places and that the process is inexpensive, unobtrusive, and, if the person being fingerprinted has no reason to fear the process, insignificant and irrelevant. The commenter noted that most of the individuals covered by the relieved categories would be escorted and that providing relief causes confusion and makes the process more complicated. The commenter further noted that there is no more guarantee that these persons are more reliable than other workers; therefore, why proceed with exemptions that weaken the regulation.

Response: The NRC disagrees with the comment. NRC continues to believe that these categories of individuals should be provided relief. Many of these individuals have undergone equivalent background investigations or by the nature of their positions are considered to be trustworthy and reliable as a matter of policy. Just because an individual is relieved from the background investigation elements, a licensee is not required to provide unescorted access to the material. For example, if a member of Congress were to visit a facility, the licensee would likely escort the individual and not allow him or her to wander the facility unescorted. An individual would still need to receive security and radiation protection training before being granted unescorted access.

Comment B77: One commenter disagreed with providing relief from the background investigation elements other than the fingerprints and criminal history check. The commenter noted that the relief is inappropriate for certain categories of individuals, in particular those covered under § 37.29(k). As an example, the commenter noted that a favorably adjudicated Security Risk Assessment under the Select Agent program does not assess the depth and breadth of information required under the full background checks specified either by existing orders or the proposed regulations. The commenter noted that the risk assessment only includes those checks specified under the Patriot Act and that character determination, credit history, verification of education, verification of employment, and the gathering of corroborating information are not explicitly included. The commenter noted that the acceptance of a Security Risk Assessment in place of the more extensive checks creates a double standard and introduces potential vulnerability into the personnel reliability process. The commenter noted that the information that would be analyzed for personnel under § 37.29(k) does not provide sufficient basis to assess whether an individual is trustworthy and reliable under the requirements set forth under either the NRC orders or under the proposed background check requirements.

Response: The NRC agrees with the comment and has revised the rule. The relief provided for individuals that come under § 37.29(b) (formerly § 37.39(k)) only applies to the fingerprints and FBI criminal history records checks; the other elements of the background investigation must still be completed. For the other categories of individuals in § 37.29(a), relief is provided from all the background investigation elements.

Comment B78: One commenter objected to exempting commercial vehicle drivers for road shipments of category 2 quantities of radioactive material. The commenter felt that devices and sources are more vulnerable during shipment by a nonlicensee carrier than under licensee or manufacturer control and, therefore, carriers must require a background investigation for their staff with unescorted access to category 2.

Response: While understanding the commenter's concern, the NRC believes that the relief is appropriate. The licensee does not control the carrier or whom the carrier employs. However, the carriers are subject to DOT. Title 49 CFR 172.800 requires that each person who offers for transportation in commerce or transports in commerce category 1 or category 2 quantities of

radioactive material to develop and adhere to a transportation security plan. The components of the transportation security can be found in 49 CFR 172.802.

Comment B79: One commenter requested that information be provided on what elements of the background investigation each category of individual relieved from the background investigation under § 37.29 go through.

Response: The NRC acknowledges that the background investigation conducted for individuals in the relieved categories contained in § 37.29 may not contain all of the aspects of the background investigation required under part 37. In some cases, the background investigation is more exhaustive, such as the Federal background investigation for access to classified information, and some may contain fewer elements. The licensee is not required to allow these individuals unescorted access to radioactive material and can choose to escort them. The licensee can also choose to conduct an investigation that included some or all of the background investigation elements before allowing such an individual unescorted access to the material.

Comment B80: Two commenters recommended that the relief from the background investigation elements for individuals with a Federal security clearance be extended to include other aspects of the authorized individual process such as NRC approval of the reviewing official. One commenter requested clarification as to whether the relief granted by this regulation may be extended to individuals who will serve as the licensee's reviewing official.

Response: The NRC agrees with the comment that if the potential reviewing official meets one of the relief categories of § 37.29, the individual would not need to be fingerprinted and undergo a new background investigation. The rule has been clarified.

Comment B81: One commenter requested that § 37.29(g) be revised to include master materials licensee employees conducting inspections under their license authority. The commenter also requested that subparagraph (k) be revised to contain an explicit statement about whether persons approved under a government program have to be reapproved after a specified time interval.

Response: The NRC disagrees with the comment. A licensee employee conducting an inspection on the licensee's own program is not the same thing as an NRC or Agreement State inspector. The NRC disagrees that the individual should be relieved from the background investigation elements as the individual is still a licensee employee. The individuals who were granted relief would be subject to the 10-year reinvestigation. If the individual still fell under one of the categories, such as § 37.29(l), he or she would continue to be relieved. However, the licensee would need to document that the relief category still applied.

Comment B82: One commenter requested that the relief provided by § 37.29(i), from background investigations for emergency personnel responding to an emergency, be extended to emergency response personnel who are not responding to an emergency. The commenter pointed out that these individuals need frequent access for smoke detector checks, safety inspections of fire walls, assessment of and response to false alarms, etc.

Response: The NRC disagrees with the comment. Fire department personnel who need to check smoke detectors and conduct safety inspections can be escorted. The NRC does not see why these individuals would need unescorted access to radioactive material. Someone responding to an alarm would be considered responding to an emergency, even if the alarm turned out to be false.

Comment B83: One commenter suggested expanding § 37.29(j) to include handlers at the transportation facilities, *i.e.,* the people who physically handle the package at the freight terminals and move the packages from one location to another. The commenter noted that licensees cannot perform checks for these nonemployees.

Response: The NRC agrees with the comment and has added a new category to include handlers at transportation facilities such as freight terminals and rail yards.

Comment B84: One commenter noted that there is a gap whereby § 37.29(m) does not cover self-employed service provider licensees who are small business owners, for example, independent service technicians who are licensed to perform maintenance and repairs on sealed source irradiators. The commenter noted that these individuals are qualified in a similar way for the applicability of § 37.29, yet the wording of this regulation does not appear to extend to them.

Response: The NRC believes that § 37.29(a)(13) (formerly § 37.29(m)) does cover a self-employed service provider. The access authorization program would not be required of a service provider that does not possess material; however, there is nothing in the regulation that would prevent the service provider from conducting background investigations that meet the requirements of § 37.25. The service provider would need to provide written verification that the individual has been determined to be trustworthy and reliable under a subpart B program. Additional information has been added to the implementation guidance to address this situation.

Comment B85: One commenter indicated that § 37.29 should include exemption provisions for reputable security system vendors. The commenter noted that these vendors perform extensive background checks as part of their hiring process and it seems reasonable to consider the service providers, software engineers, etc. who work at or with a licensee's institution to be authorized to access the controlled areas. The commenter noted that it is unreasonable to expect the licensee to conduct its own background checks on all employees of the company who may be involved in the security system at the particular institution. The commenter noted that by not allowing this exemption, the licensee may be less inclined to use the state-of-the-art security systems available and this may be detrimental to the overall security of the material. The commenter noted that although security service providers are addressed in the ''protection of information'' section (§ 37.43(d)), they should be included here as well, since they not only have knowledge of the security program but may also have the ability to grant access.

Response: The NRC disagrees with the comment. It is not clear why security system vendors, particularly software engineers, would need to have unescorted access to the radioactive material. These individuals would need to have access to some of the licensee's security information, which is why they were included in § 37.43(d). Security system vendors may or may not conduct fingerprinting and an FBI criminal history records check as part of their investigation during the hiring process. Licensees may accept documentation from vendors that vendor employees have undergone a background check meeting the requirements of this part, but in the absence of evidence that all vendors' employment checks meet part 37 requirements; vendor employees should not be exempted by rule. Licensees also retain the prerogative to escort such employees when they are onsite.

Comment B86: One commenter, while noting that several State employees listed by job duties are listed as being relieved from the background investigation requirements, suggested that State licensing staff, information

technology staff, and legal staff be included. The commenter noted that these individuals may also have access to such information.

Response: The NRC believes that the provisions in § 37.29 are broad enough to include other State employees that may require access.

Comment B87: The Nebraska Emergency Management Agency stated that it believes that it is exempt from the fingerprinting, identification, and criminal history records check requirements and only needs to provide physical security for its one category 2 quantity source until such time as the source is collected under the DOE source recovery program.

Response: No licensee is exempt from the provision of 10 CFR part 37. Section 37.29 does provide relief from the fingerprinting and background investigations for individuals that fall under one of the categories. State employees would likely come under the provision of § 37.29(a)(4) or (6) and would be relieved from the background investigation elements.

Comment B88: One commenter asked what ''other property'' refers to in § 37.29.

Response: The term ''other property'' comes from the AEA. The NRC has removed the term as it has no meaning in the context of 10 CFR part 37.

Comment B89: One commenter suggested that the regulation itself makes it clear that a licensee has the option of escorting the category of individuals provided relief from the background investigation (§ 37.29), and that granting unescorted access to these individuals is not required. The commenter also noted that it should be made clear that the security training must be provided before granting unescorted access.

Response: The NRC does not believe that the regulation needs to specify that the licensee has the option of escorting the individuals. It is always up to the licensee to decide whom it allows to have unescorted access. The provision in § 37.29 only provides relief from the background investigation elements and does not require granting unescorted access to designated categories of individuals. Any individual allowed unescorted access to the material must meet all of the licensee's applicable training requirements before having unescorted access to the material.

Comment B90: One commenter requested that each subsection in § 37.25, ''Background investigations,'' be revised to explicitly state if the subsection is applicable and must be followed for those who are relieved from elements of the background investigation under § 37.29.

Response: The NRC does not believe that it is necessary to make the requested revisions. Section 37.29(a) relieves the licensee from conducting the fingerprinting and all other elements of the background investigation. However, the licensee can still choose to conduct all or some of the elements before providing unescorted access to an individual who is covered by one of the categories listed in § 37.29. The licensee will still need to verify identification.

Comment B91: One commenter, while supporting the transfer of background information to outside entities allowed by § 37.31(c) felt that it would create additional legal issues and burdens on the HR department that they would not be able to meet. The commenter was concerned about the ability to authenticate the documentation presented and avoid fraudulent documentation. The commenter is concerned that there is no legally proper way to transfer such private information in a secure manner that would not create legal failure points and possible violations, as such, they would neither request nor offer such information.

Response: The language in the rulemaking under § 37.31(c) states that the personal information obtained on an individual from a background investigation may be provided to another licensee. While an individual may request that this information be transferred or shared, the licensee is not required by these regulations to do so, thereby minimizing or eliminating additional legal issues or burdens on the HR department that could arise from such requests. Any decision to request or provide such information should be made at the licensee's discretion. The rule merely states that NRC considers it an acceptable practice, provided that the stipulations in § 37.31(c) are met.

Per the language provided in § 37.31(c)(2), the recipient licensee must verify information such as name, date of birth, social security number, gender, and other applicable physical characteristics, which should aid in authentication and the avoidance of utilizing fraudulent documentation.

Comment B92: Two commenters noted that the proposed rule has no mention of safeguards of the privacy of this background information, or of the method of review. One commenter requested clarification on whether the licensee needed to retain the fingerprints or just the records returned from the FBI.

Response: Information protection provisions for the background investigation are located in § 37.31. The licensee is only required to retain the records returned from the FBI and not the actual fingerprints. The NRC is not sure what the commenter meant by method of review.

Comment B93: Two commenters suggested revising the language for the timing of the program review to ''periodically (at least annually) review'' similar to what is contained in § 20.1101. The commenters stated that the proposed wording is onerous and unnecessary. Another commenter suggested adding the access authorization program review to the security program review. Several commenters suggested a 36-month timeframe or after changes to the program. The commenter noted that the program should see little revision once it is put in place and that an annual review seems excessive. One commenter indicated that NRC should specify those essential program elements for inclusion in the program review noting that placing such information in the guidance would not be enforceable and would be a disservice to licensees. Another commenter stated that there were too many criteria and it could lead someone to think that the annual security review was more important than the safety review. Another commenter suggested every 3 to 5 years for the program review. One commenter noted that the program review could take from 1 to 3 man days.

Response: The NRC agrees with the comment in part and has revised the language for the program review to be consistent with § 20.1101. The use of consistent terminology between the safety and security programs should enhance the licensee's understanding of the requirement. The content of the program review has not been revised.

Comment B94: Two commenters recommend that facilities utilizing Federal security clearances should be exempted from the program review.

Response: The NRC disagrees with the comment. While the actual background investigations and protection of information would be covered by the Federal program, other aspects of the access authorization program would not necessarily be included in the Federal program. For example, the licensee would still need to have a program in place to document the information on who has access.

Comment B95: One commenter stated that the reviewing official and the individual with overall responsibility for the security program should be required to review the access authorization program review findings. The commenter felt that it was logical for the individual with overall security

responsibility to be involved in the review; otherwise, the program could result in split responsibility for the security program.

Response: The NRC disagrees that a rule change is warranted. The rule provides the licensee with flexibility as to who should be designated to review the program review findings. The NRC does agree that it would be appropriate for both the reviewing official and the individual with overall responsibility to conduct the review.

Comment B96: One commenter questioned whether licensees should be obligated to provide unescorted access to any inspectors. The commenter asked whether Agreement State inspectors are required to present credentials indicating that they are in compliance with the background investigation.

Response: Licensees are not obligated to provide unescorted access to an inspector. A licensee always has the option of accompanying the inspector. The regulations only require that the licensee ''shall afford to the Commission at all reasonable times opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.'' This means that the licensee must allow the inspector to go anywhere in the facility but can choose to accompany the inspector. A licensee has the right to request that an inspector present his or her credentials (*e.g.,* an agency issued badge) and to confirm with the inspector's home office that the individual is indeed an employee of the agency. However, the inspector is relieved from the background investigation elements and does not need to present any documentation of compliance with the background investigation.

Comment B97: One commenter recommended adding language that states that the licensee is not prohibited from revoking previously granted authorizations at any time.

Response: The rule contains language in § 37.23(e)(4) that allows the reviewing official to terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the individual has obtained unescorted access.

Comment B98: One commenter noted that language needs to be included to allow access to SGI–M and other security related information identified in the part in addition to unescorted access privileges for category 1 and category 2 materials.

Response: The NRC disagrees with the comment. Provisions for the protection of SGI, including access restrictions, are located in §§ 73.21 and 73.23. The requirements do not need to be repeated in 10 CFR part 37. Part 37 contains appropriate references to the 10 CFR part 73 SGI requirements.

Comment B99: One commenter noted that language is necessary to include the phrase 'unless otherwise suspended or revoked' to address those situations where such restrictive actions became necessary in regard to access to information or the material.

Response: The NRC disagrees with the comment. Section 37.23(e)(4) contains language that permits the reviewing official to terminate or revoke an individual's unescorted access authorization. The NRC does not believe that additional language is necessary.

Comment B100: One commenter indicated that the rule should include a limitation on escorted access to only those needing such access to perform a job function or assist in educational activities.

Response: The NRC disagrees with the comment. The licensee should be allowed to determine who should be provided escorted access to the facility and materials. While there should be a need for the escorted access, there could be reasons other than to perform a job function or for educational activities.

C. Security During Use

Comment C1: One commenter stated that § 37.41(a) did not allow for the concept of co-location of sources, only addressing aggregated sources. The commenter noted that it was not cost effective to require increased controls on fixed gauges that are scattered throughout a facility.

Response: The concept of co-location is built into the definition for aggregated. Fixed gauges that did not fall under the orders do not fall under 10 CFR part 37.

Comment C2: Several commenters stated that the provisions in § 37.41(a)(2), providing for a 90-day notice before aggregation of material, were confusing and unnecessary and that aggregation would be detected during routine inspections. The commenters felt that the provisions would lead to unintentional noncompliance. Another commenter questioned how the agency would know when a licensee aggregated the material, indicating that it would be time consuming and costly to coordinate and track. Another commenter suggested adding language to address the permittee system under master materials licenses. One commenter noted that § 37.41(a)(4) required implementation before possession. One commenter noted that it should be assumed that licensees are implementing the measures if they aggregate. One commenter disagreed with the notification for activation of the security plans.

Response: The NRC agrees in part and disagrees in part. The provision was added to help licensees that do not routinely possess an aggregated category 2 quantity, but may on occasion. The provision was intended to provide some relief from the need to always meet the requirements. However, since the wording has caused confusion, the NRC has revised the provision to simplify and clarify the requirement. A licensee only needs to provide a 90-day notice before aggregating the material if the licensee has never implemented either the orders or the 10 CFR part 37 provisions.

Comment C3: One commenter suggested adding a provision in § 37.41(2) to note that the NRC or Agreement State may prohibit the transfer of radioactive material in quantities of concern should an evaluation of the security plan be found lacking until corrective measures are taken and verified.

Response: The NRC disagrees with the comment. The NRC or State may take action to prohibit the transfer of material in such a situation; however, a provision in the regulations is not necessary. NRC would typically issue an order to the licensee or issue a confirmatory action letter documenting the licensee's agreement not to ship material until the issues have been resolved.

Comment C4: One commenter recommended that the general performance objective in § 37.41(b) be revised to remove the phrases ''without delay'' and ''an actual or attempted.'' Two commenters noted that this objective is unrealistic during normal business hours as unauthorized access, whether actual or attempted, would only be detected ''without delay'' if individuals were in the vicinity and could witness the access or attempt to access. One of the commenters stated that ''without delay'' is unrealistic during normal business hours as a business' security system will not be set to alarm. One of the commenters noted that areas that may contain category 1 or category 2 quantities may be locked and unoccupied but not monitored. The commenters further noted that, after business hours, an armed security system could detect (without delay) unauthorized access to an area that contained a category 1 or category 2 quantity of material but may not be able to detect an ''attempt'' to access the area

as the attempt may have failed without compromising a security measure or triggering an alarm. One commenter suggested revising the performance objective in § 37.41(b) as follows: ''Each licensee shall establish, implement, and maintain a security program that is designed to monitor, detect, assess, and respond to unauthorized access to category 1 or category 2 quantities of radioactive material.'' One commenter recommended defining ''without delay'' in § 37.41(b), particularly with regard to the assessment of an access incident. One commenter suggested the following language for § 37.41(b): ''Each licensee shall establish, implement, and maintain a security program that is designed to monitor, and without undue delay detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material as outlined in their security plan.''

Response: The NRC disagrees with the comment. The purpose of the security program is to prevent unauthorized access and to detect unauthorized removal of the material. The sooner material is discovered to be missing, the more quickly a response can be started that includes trying to apprehend those who stole the material and to recover the material before it can be used for malevolent purposes. The NRC agrees that the licensee is not expected to respond to events that do not trigger the security system. The threshold for the security systems should not be set so high that actual attempts, such as someone trying to pry open the door, are not detected or so low such as someone casually brushing a doorknob sets off the alarm. The NRC does not see any benefit to adding ''as outlined in their security plan'' to the rule text. The security plan must meet the requirements, and the licensee must follow the security plan.

Comment C5: One commenter recommended that a provision be added to require the licensee to appoint an individual with overall responsibility for the security program. The commenter noted examples where no one individual had responsibility to implement the security measures and noted that a default person such as the RSO may not have the necessary authority or ability to ensure that the program is working. The commenter noted that having the licensee specifically designate an individual will clarify responsibility and provide some authority. Another commenter noted that the individual should be placed on the license as is done for the RSO.

Response: The NRC, while agreeing that it is good practice to have an individual with overall responsibility for the security program, does not believe that the requirement needs to be in the regulations. If there were a requirement most licensees would likely name the individual on the license and then it would take a license amendment to change the named individual.

Comment C6: Several commenters objected to the requirement to develop a security plan if they are authorized but never possess a category 2 quantity or never aggregate the material above a category 2 threshold. Commenters felt that the exercise to develop a plan was a waste of time and manpower and questioned the value of preparing for an eventuality that will never occur. Some commenters noted that the material was in different buildings or scattered throughout a facility. One commenter stated that physical protection requirements during use have already been met and there isn't any evidence that requiring licensees to try and track locations of small amounts of source material so as not to aggregate to a threshold quantity is unnecessary to protect the security of the general public. One commenter asked what the security plan should contain if a licensee doesn't possess category 2 quantities of material. Two commenters stated that a licensee must implement a full security program based on authorization and not possession and that this is inconsistent and places an undue burden on licensees. One commenter requested clarification on whether the security plan would need to be implemented if the licensee was authorized for sources above the category 2 threshold but the sources were located at different sites.

Response: The NRC agrees with the comment and has revised the rule. Licensees will only be required to develop and implement a security plan if it aggregates the material to a category 1 or category 2 quantity of radioactive material at a specific location.

Comment C7: Several commenters felt that the specified contents for the security plan were too prescriptive. Commenters felt that each facility needs to have the flexibility necessary to develop a security plan that works best for them and that every security plan may not need all the prescriptive requirements specified in the proposed rule. Commenters noted that licensees have already developed their programs to implement the orders and that the programs have already been inspected and compliance verified. Commenters felt that the specificity of the rule was in conflict with the concept of a performance-based regulation. One commenter noted that the blind ''broad brush'' application of arbitrary requirements is not how to increase security; it should be based on each licensee's unique requirements. One commenter noted that there should be an exemption for licensees that already have a security plan in place.

Response: The NRC does not agree with the comment that the security program is too prescriptive. The licensee is free to choose the methods that work best for its facility; the exact security measures to be used are not prescribed. The content of the security plan is based on the measures that the licensee chooses to use. The NRC has made changes to § 37.43(a) to clarify that the security plan is specific to a facility and its operation and to remove the requirement to address site-specific conditions that affect implementation. The NRC has determined that the site-specific aspects would be addressed by the measures used by the licensee and could not be addressed for temporary jobsites without creating a security plan for each site. It was not the NRC's intent to require a unique security plan for each temporary jobsite. The NRC has also removed the requirement to include a description of the training program. There is a separate requirement that addresses training, and it is not necessary to describe the program in the security plan.

Comment C8: One commenter noted that the original security plan must be reviewed and approved by the individual with overall security responsibility but that any revisions to the plan must also be reviewed by licensee management. The commenter questioned the different review and approval requirements. The commenter further noted that licensee management may not have a need-to-know and may not wish to go through the background investigation process just to review a plan, particularly if the authority and responsibility have been delegated. Another commenter noted that this also contradicts the requirement to limit access to the security plan.

Response: The NRC agrees with the comment and has removed the requirement for licensee management to review the revised plan.

Comment C9: One commenter stated that the phrase ''measures and strategies'' in § 37.43(a)(1)(i) is meaningless and unenforceable even as a performance-based goal. The commenter stated that the phrase should either be removed or the intent made clear by measurable, quantifiable, or otherwise objective expectations.

Response: The NRC disagrees with the comment. The licensee is required to describe the overall approach, methods,

and equipment that it uses to meet the security requirements. Additional information has been added to the guidance.

Comment C10: One commenter indicated that the present security plan (from the orders) is sufficient and that a more stringent security plan is unnecessary.

Response: The NRC disagrees with the comment. The orders did not require licensees to even develop a security plan. The NRC does not believe that the requirements for the security plan are overly stringent. In fact, the licensee has the flexibility to include in the plan the site-specific measures that the licensee employs.

Comment C11: One commenter requested clarification in the situation where there is a high-level corporate security plan in place. The commenter's interpretation is that the security plan is not required to apply exclusively to the security of category 1 and 2 radioactive materials but can be an adaptation of a preexisting site or corporate-wide plan as long as the required elements are met.

Response: The NRC agrees with the comment. As long as a preexisting site or corporate-wide plan meets the requirements of subpart C as to the content of the security plan, the plan would be acceptable and a new plan would not need to be developed.

Comment C12: One commenter asked whether the written security plan must be a separate document in addition to the Standard Operating Procedures (SOPs) that pertain to security. The commenter felt that it is acceptable for a set of written SOPs to constitute a ''written security plan'' and would like the regulation to confirm that. Another commenter requested that a subsection be added to § 37.43 to allow the security plan and procedures to be the same document or a group of documents.

Response: Each licensee must determine what information is applicable to its facility and must be included and documented in its security plan. If a licensee already has a security plan developed to meet the requirements of an order or for other purposes, and this plan meets all the requirements in 10 CFR part 37, there is no need to develop a new plan. However, it is unlikely that many licensees will already have all the required information in place in existing procedures.

If a licensee has existing written procedures and policies in place that will be incorporated as part of its security plan under 10 CFR part 37, these may be referenced in the security plan as such; however, if these existing procedures contain information which would require marking and handling as SGI–M, then the licensee must ensure that all copies of the existing documents are appropriately marked and handled.

Comment C13: One commenter proposed that for mobile licensees the rule be modified to allow the preparation and submittal of a generic security plan that would be supplemented by a project-specific security plan prior to initiating work on any given project. The commenter proposed that the submittal of the generic security plan be required within 30 days of publication of the final rule as proposed by NRC; however, the 90-day requirement would not apply.

Response: It was not the intent of the NRC to require the development of a site-specific security plan for each temporary jobsite. Development of a general security plan that addresses how security will be applied at temporary jobsites will meet the requirement for having a security plan. The security plan is not submitted to the NRC for approval but would be available at a facility or temporary jobsite during inspection. The NRC has removed the requirement that the security plan address site-specific conditions.

Comment C14: One commenter noted that, since the security plan is to include a description of the environment, buildings, or facility where the material is used or stored, this would require companies that work at temporary jobsites to develop a separate plan for each jobsite. The commenter noted that this would be extremely costly and would require at least one additional employee per crew to follow the workers around, assess the surrounding environment, write a security plan, and train the crew in the new security plan prior to any work being performed each day. The commenter stated that this would cause undue burden on the licensee with no evidence that it would in any way stop an attack or protect the general public.

Response: The NRC agrees with the comment and has removed the requirement for the security plan to address site-specific conditions. It was not the intent of the NRC to require the development of a site-specific plan for each temporary jobsite. Development of a general security plan that addresses how security will be applied at temporary jobsites will meet the requirement for having a security plan. For those temporary jobsites that may be considered permanent (*i.e.,* pipe yards), the licensee should develop a more specific security plan.

Comment C15: One commenter noted that references to the security plan should be more specific to avoid security plans required by other parts.

Response: The NRC disagrees with the comment. The term, as used in 10 CFR part 37, refers to the security plan required by 10 CFR part 37, and there should be no confusion. Anywhere in this **Federal Register** notice or in the guidance for the rule where a different security plan is being referred to, language has been added to make clear that it is a 10 CFR part 73 security plan.

Comment C16: One commenter stated that the security program is too prescriptive and suggested using language similar to § 20.1101 to implement a program commensurate with the scope and extent of licensing activities and sufficient to ensure compliance with the provision of this Part. The commenter stated that this would allow the licensee the necessary flexibility in documenting its specific program but would not be prescriptive.

Response: The NRC disagrees with the comment. The NRC believes that the 10 CFR part 37 requirements provide the licensee flexibility. The rule does not specify what specific measures that a licensee must use; a licensee can choose those methods that fit its facility. The security plan, procedures, and training would address the measures that the licensee has chosen to use to protect the material.

Comment C17: One commenter suggested deleting § 37.43(b) on implementing procedures because separate procedures for the implementation of the security program are unnecessary since they should be incorporated into the security procedures. Another commenter stated that many implementing procedures will be developed that do not include specific security measures designed to protect the sources and that do not need to be protected under this section. As examples the commenter offered procedures and forms on how to apply for unescorted access, how to add people to Radiation Use Authorizations involving irradiators, or procedures on record destruction.

Response: The NRC disagrees with the comment in part and agrees in part. Implementing procedures are a necessary component of both safety and security programs. If a licensee already has security procedures, it is acceptable to continue using those procedures and update the procedures to reflect any changes to the program. The licensee is not required to protect all of its procedures under this provision. The only procedures that require protection are procedures that document how the security program is implemented. This would include procedures on alarm

response, security guard checks, and procedures that describe actual security measures. It would not include the types of procedures mentioned by the commenter. Examples have been added to the guidance document.

Comment C18: One commenter noted that § 37.43 does not mention that the requirements apply to individuals who have access to SGI.

Response: Section 37.43(d)(8) does contain a reference to the protection of SGI. The requirements for access to and protection and handling of SGI are contained in 10 CFR part 73.

Comment C19: Several commenters stated that there was no need for the refresher training unless something specific about the program changes. Commenters felt that only those individuals with a need-to-know should receive training on specific changes and that not everyone should be trained on the security plan. One commenter noted that those who just use the device do not need to be trained on the security of the device. Two commenters felt that refresher training every 12 months would be burdensome, particularly if you have many employees needing the training. One commenter suggested that the periodicity of the refresher training be based on licensee's expectations and assessments for a need for refresher training. One commenter noted that the inclusion of training on the security program just added to the overhead. Another commenter expressed concern with the probable cost of the training program and noted that it could require a staff member to be assigned to the task full time to keep up with the training, refresher training, and testing for large numbers of diverse individuals with frequent turnover such as at a university. One commenter requested cost estimates specific to the training requirement.

Response: The NRC disagrees with the comment. The NRC believes that training is an essential element of any program. If employees are not trained, how will they know what to do if an alarm sounds or material is determined to be missing? The training needs to be commensurate with the individuals' responsibilities. The estimated cost for the training is included in the regulatory analysis prepared to support the rule.

Comment C20: One commenter stated that the training program requirements were too prescriptive and go well above what is in the existing orders. One commenter wanted to know what the training entails and requested a definition of the term ''adequate training.''

Response: The NRC disagrees with the comment that the training program requirements are too prescriptive. The NRC believes that training is an essential element of any program and should be required. The orders did not require any training to be conducted. The training must address the licensee's security program and procedures and the security measures employed by the facility. Individuals do not need to be trained on the complete security plan; the training should be commensurate with their responsibilities. The provisions in § 37.43(c)(1)(ii), (iii), and (iv) are also general and are similar to the training provisions of § 19.12.

The term ''adequate training'' is not used in the rule language. However, the training must cover the information for an individual to carry out his or her assigned duties and responsibilities.

Comment C21: One commenter stated that § 37.23(a)(2) requires users to be trained in all aspects of the security plan and that this conflicts with § 37.43(c)(2) which notes that the training should be commensurate with the individual's responsibilities.

Response: The NRC disagrees that there is a conflict between the sections. Section 37.23(a)(2) requires the training required by § 37.43(c) to be completed before allowing the individual to have unescorted access. It does not state that the individual must be trained on all aspects of the security plan.

Comment C22: One commenter recommended defining ''relevant results'' in § 37.43(c)(3).

Response: The NRC disagrees with the comment. The term relevant is a common term and in this case simply refers to items that are related to security. Examples of some items that would be included are areas where staff has had trouble following the security requirements, violations of the security requirements that have been discussed in an inspection report, and measures taken to fix any identified security issues. Additional information has been added to the associated implementation guidance.

Comment C23: Two commenters requested clarification on the timing of the refresher training. The commenters noted that their understanding was that refresher training could be taken more than 365 days after the previous training, as long as it is taken within the same month of the succeeding year.

Response: The commenter is correct in its understanding that the training is to be provided at a 12-month frequency and be conducted within the same month of each succeeding year. This allows licensees greater scheduling flexibility to accommodate the needs of their operations, instead of holding them to a strict 365-day time constraint.

Comment C24: One commenter did not think that the licensee should be training the LLEA on rules of engagement, such as the proper response to an alarm. The commenter also asked whether it would be considered self defense to shoot a perpetrator that holds a category 2 source up as to expose the responder. Another commenter noted that the LLEA does not have the time or the inclination to undergo licensee training. One commenter requested clarification on whether the training program included LLEAs.

Response: The training is not for the LLEA but for the licensee's staff that would be responding to the alarm. The licensee is not required to conduct any training of the LLEA, although providing the LLEA an overview of the facility is a good practice. The rule does not authorize lethal force or arming of licensee personnel.

Comment C25: In the proposed rule, the NRC specifically invited comment on the requirement to protect security-related information. Commenters were requested to provide information on: (1) Whether the Agreement States have adequate authority to impose the information protection requirements in this proposed rule; (2) whether the Agreement States can protect the information from disclosure in the event of a request under a State's Freedom of Information Act or comparable State law; (3) whether the proposed rule is adequate to protect the licensee's security plan and implementing procedures from unauthorized disclosure, whether additional or different provisions are necessary, or whether the proposed requirements are unnecessarily strict; (4) whether other information beyond the security plan and implementing procedures should be protected under this proposed requirement; and (5) whether the background investigation elements for determining if an individual is trustworthy and reliable for access to the security information should be the same as for determining access to category 1 and category 2 quantities of radioactive material. Nineteen commenters provided responses to the specific questions on this subject.

Of those that provided responses to the questions on the protection of information, the commenters were divided in their views. Some felt that the proposed provisions were sufficient, some felt that they were unnecessarily strict, and some felt that the current provisions from the Increased Control Orders were sufficient. One commenter stated that with the proposed provisions, there was no continued need

for any of the security information to be considered SGI or SGI–M. One commenter stated that the requirements should be clarified to indicate that only written copies of the plan and procedures will be protected. One commenter stated that the rule was unnecessarily strict by requiring that persons with access to the security plan and procedures also be permitted unescorted access to the sources. Two commenters suggested that the list of individuals granted unescorted access to the security zone should also be protected. Most of the commenters agreed that the background investigation elements for determining whether an individual has access to the information and radioactive material should be the same. Two individuals stated that a criminal history records check should be part of the background investigation for access to the information. Two commenters stated that the elements should be different but did not indicate what should be different. On the question of whether the States have adequate authority to impose the information requirements, many commenters indicated that the States do have the authority or that they thought the States did. On the question of whether the States can protect the information from disclosure in the event of a request under a State's Freedom of Information Act, most of the responses were not definitive. Several commenters indicated that an opinion from the State Attorney General's Office would be necessary; four States indicated that they did have the necessary authority.

In addition to those that provided responses to the specific questions, 8 commenters addressed the information protection provisions. One State noted that it did have authority to impose the information protection requirements and could protect the information from disclosure. One commenter noted that there are already processes in place under SGI and/or official use only (OUO) to protect security information.

One commenter recommended adding the list of individuals approved for unescorted access authorization to the information that must be protected from unauthorized disclosure, noting that if the names become public, the individuals could potentially be targeted to gain unabated access to sources. One commenter requested that § 37.43(d)(1) be revised to clarify that the protection of information refers to the written security plan or procedures only, so as to preclude unwarranted interpretations during a regulatory inspection about what information or discussions to restrict. The commenter offered suggested language as follows: ''(1) Except as provided in paragraph (d)(8) of this section, licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to copies of their written security plan and implementing procedures and unauthorized disclosure of substantive details of the plan or procedures that facilitate unauthorized access.''

Commenters noted that the fingerprinting element was not included in the background investigation elements for access to security information, and several commenters stated that it should be included. Other commenters requested clarification whether fingerprints were prohibited for this purpose. Commenters requested that the NRC make the requirements for background checks consistent throughout the rule. One of the commenters noted that a licensee is left either to perform incomplete checks on individuals with whom information is shared, or to grant unrestricted access to individuals who truly do not need the access, just to allow the licensee to conduct the main element of the background check (*i.e.,* the FBI identification and criminal history records check). One commenter stated that the response discussion for C6 in the Statements of Consideration should be modified to include the requirement that anyone seeking information on category 1 quantities of radioactive material must also have undergone the access authorization process, including the FBI criminal history review and fingerprint identification verification. The commenter stated that this would be a practical threshold for States to have equivalent rules in place that mimic the NRC's SGI–M requirements in 10 CFR part 73.

One commenter stated that the phrase ''security service provider employees'' as used in paragraph § 37.43(d)(4)(ii) is too general. The commenter indicated that it didn't appear that the intent of the NRC was to require background checks on individuals who do not access the facility and simply monitor the facility's security system from an offsite location, such as alarm service providers. The commenter further asked if the requirement is intended to address security guard service employees who work on the licensee's premises that contain category 1 and category 2 quantities of materials. Another commenter requested clarification and suggested revised language. One commenter noted that the exemption to performing background investigations for employees of security service providers requires written verification from the provider for each employee. The commenter stated that it may be more appropriate to approve the security service provider as a whole since it may be difficult for the licensee to maintain a current list of all employees of the vendor who may have intimate knowledge of the security system at the licensee's location(s). The commenter noted that it would be burdensome for the licensee to track individual employees of these companies. The commenter stated that a letter documenting the background investigation procedures of the security vendor could be provided to the licensee to allow it to forego the access authorization procedures for the security vendor employees. One commenter stated that each subsection on the protection of information (background investigation information) should be revised to state explicitly which subsections are applicable and must be followed for individuals provided relief in § 37.29.

One commenter stated that there should be no need to have another documented basis for an individual to have access to the security plan if it has already been documented that the individual has unescorted access to material as it is redundant and create additional burden. One commenter also requested that a table or flow diagram be added to the guidance document to show when the background investigation elements apply.

Response: All aspects of the information protection requirements apply to all of the background investigation information possessed by the licensee whether the information is the full background investigation or information on how the individual met a category in § 37.29 for relief from background investigation requirements. The NRC agrees that the list of individuals that have been approved for unescorted access should be protected and has added it to the list of items for protection. Individuals do not need to have unescorted access to the radioactive material in order to have access to the protected information. An individual who has been granted unescorted access to the radioactive material would not need to undergo another background investigation to have access to the security information. The licensee would need to document that the individual has a need-to-know the information. The rule has been clarified that a second background investigation is not necessary.

On the issue of protecting only written copies of sensitive information, the NRC disagrees with the comment. The licensee must protect against any form of unauthorized disclosure of the

protected information, including verbal or electronic disclosure.

On the issue of the security service provider, the NRC disagrees with the suggested change as a security service provider may not be a guard and could include other occupations. Language in § 37.43(d)(4)(ii) allows the licensee to accept a security service provider's determination of trustworthiness and reliability based on a full background investigation. Additional information has been added to the implementation guidance.

On the issue of requiring fingerprints and FBI criminal history records for access to the information, the NRC does not have the authority to require fingerprints for access to this type of security information. The NRC can only require fingerprints for access to SGI and unescorted access to radioactive material. The NRC has added a table to the guidance document on the background investigation elements.

Comment C26: One commenter requested clarification of § 37.43(d)(3) as to whether individuals, who by nature of their job position have knowledge of critical components of the security plan, would be required to undergo a background investigation unless they have access to the security plan document or any of its implementing SOPs. Examples include a security guard with access to an alarm-response schematic or an IT specialist who supports an IT system responsible for alerting security personnel of adverse indicators in the area of category 1 or category 2 radioactive sources. In each case the individual has knowledge of security plan components but would not have access to the plan itself or implementing SOPs.

Response: Employees or service providers with limited knowledge of the security plan but without access to the plan or the implementing procedures would not necessarily need to undergo a background investigation. The licensee would have to decide in some cases how much knowledge of the plan the employee has; if the employee is familiar with the plan and procedures, even if he does not have access to the document, it may be necessary to conduct a background investigation and make a determination of trustworthiness and reliability. Note that new language in § 37.43(d)(4)(ii) allows the licensee to accept a security service provider's determination of trustworthiness and reliability based on a full background investigation.

Comment C27: One commenter requested that the language in § 37.43(d)(5) requiring that "* * * the licensee shall immediately remove the person * * *" be revised to remove the word "immediately" and to substitute "as soon as practical." The commenter noted that the person won't immediately forget the information in the plan and that there is no need for immediate removal.

Response: The NRC agrees with the comment. An immediate removal from the list is probably not necessary. The NRC has revised the language to reflect that the removal should occur as soon as possible but no later than 7 working days.

Comment C28: One commenter objected to the phrase "in a manner to prevent removal" in § 37.43(d)(6). The commenter felt that the phrase was exceedingly vague. The commenter suggested a change to "secure the plan to prevent unauthorized access."

Response: The NRC agrees with the comment and has revised the rule text to read: "When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access."

Comment C29: One commenter requested clarification on whether a reinvestigation is required for individuals who have access to sensitive information only, and if so, the procedure that should be followed.

Response: Yes, the reinvestigation applies to individuals who have access to sensitive information. The rule has been clarified to make the requirement clear.

Comment C30: One commenter requested that language from the orders addressing marking and transmission of security related documents be added to the rule.

Response: The NRC disagrees with the comment and does not believe that the marking and transmission measures need to be added to the rule. Licensees are not required to submit either the security plan or implementing procedures to the NRC. The NRC reviews these documents during inspections at the site. The transmission portion is therefore not necessary. The necessary elements from the orders on access to and protection of the information are in the rule. The other elements are good practice, but the NRC does not believe that they are essential for the adequate protection of the information. However, if a licensee believes that information submitted to the NRC should be withheld from public disclosure, the licensee should follow the requirements in § 2.390.

Comment C31: One commenter suggested that the terms "Safeguards information" and "Safeguards information modified handling" be defined in 10 CFR part 37.

Response: The NRC disagrees with the comment. Safeguards information and safeguards information modified handling are defined in 10 CFR part 73 where the requirements for handling such material are located. The reference in 10 CFR part 37 is merely a pointer to the requirements and does not establish any new requirements; therefore, the NRC does not believe that a definition for these terms is necessary in 10 CFR part 37.

Comment C32: One commenter asked that the NRC define "to the extent practicable" for coordination with LLEAs.

Response: This provision was added to the rule to provide the licensee with some flexibility. Some LLEAs may be reluctant to engage in coordination activities with a licensee. The provision "to the extent practicable" allows the licensee to remain in compliance with the rule when an LLEA will not participate in any coordination activities. The NRC does not believe that phrase needs to be defined. Guidance is available on this topic and other aspects of the rule in the associated implementation guidance.

Comment C33: Two commenters recommended deleting paragraph § 37.45(a)(1)(ii) as this information would be classified as SGI or SGI–M for some licensees and would require handling and control in accordance with § 73.21. The commenter indicated that there appears to be little if any benefit in providing this information to the LLEA that would warrant the dissemination of SGI or SGI–M. Another commenter felt it was unnecessary to describe specific security measures such as alarm types and locations unless the LLEA is actually monitoring these alarms. The commenter asserted that a generic description would be adequate for the purpose of LLEA situational awareness.

Response: The NRC disagrees with the comments. The NRC believes that the information on the facility can be useful to the LLEA. In an event where someone is trying to steal the material, the LLEA can mount a more informed response if information about the facility is available to the responders. When NRC staff has met with LLEA representatives, the representatives have indicated interest in the coordination activities. LLEAs are deemed trustworthy and reliable for access to sensitive security information as well as SGI.

Comment C34: One commenter noted that an LLEA is not going to tell every licensee whether the initial response to an emergency involving radioactive materials must be provided by other than armed LLEA personnel and

questioned how a licensee would know this information. The commenter suggested removing the provision as it was a nonsense requirement. One commenter stated that the NRC should coordinate with the States to be notified instead of requiring the licensee to notify the NRC after the licensee becomes aware of any State or local requirements that an initial response to an emergency involving radioactive material must be provided by other than armed LLEA personnel. Another commenter recommended removing the requirement. One commenter asked what the NRC would do after such notification.

Response: The NRC agrees that there may be some reluctance on the part of the LLEA to provide the information. The provision is not included in the final rule.

Comment C35: One commenter questioned the need for a specific written agreement for response. The commenter also requested clarification on what must be included in the agreement. Some commenters questioned the benefit of requiring coordination with the LLEAs and questioned whether this was the best use of LLEA resources given the low probability of an actual threat to sabotage or steal a category 2 source. Commenters indicated that, based on their experience to date with the orders, the LLEA coordination was not beneficial, noting that at best the LLEAs would acknowledge the coordination attempts with no commitments, other than to respond in the manner they believed was proper, and that most LLEAs were completely disinterested and did not acknowledge any information provided by the licensee. They noted that in their discussions with those LLEAs where feedback was provided, the LLEAs were unwilling to discuss the manner in which they planned to respond and unwilling to commit to any specific action as each decision to respond must be based on their judgment of the circumstance. One commenter indicated that LLEAs would not want to disclose their capabilities. One commenter noted that the LLEA is not required to comply with the request. At least one commenter questioned whether it would be more efficient to inform/train only the LLEA involved when the billions we spend on intelligence indicate a credible threat. Commenters felt that adding a requirement does not address the root cause. One commenter expressed concern that security could be reduced if the LLEA failed to protect the information or had to release the information under a FOIA request. The commenter suggested a reevaluation of the information provided to the LLEA such that release of information would not cause a breach in security. Two commenters noted that they had successfully coordinated with their LLEA under the orders and do not believe that any additional requirements are needed. One commenter indicated that the coordination process should be a clearly defined process. One commenter stated that LLEA coordination requirements were overly prescriptive and difficult to implement. The commenter stated that, if NRC feels this is necessary, NRC should take the lead and identify contacts and provide training. A commenter noted that the use of 911 is effective for all kinds of emergencies and should be used by licensees. One commenter agreed that there is value in a coordinated response from an LLEA and that such a response should include the capability of bringing armed force; however, the commenter stated that it was inappropriate to place the requirement on the licensee. The commenter stated that the extent of the response should be left to the discretion of the LLEA. The commenter noted that the requirement for a written agreement with the LLEA was unenforceable and outside the State's jurisdiction. Two commenters noted that the LLEA coordination was one of the most difficult areas to implement from the orders and places responsibility on licensees for activities they cannot control.

Response: While the orders contained a requirement for a prearranged plan with the LLEA, the proposed rule only contained a provision to request that the LLEA enter into a written agreement. After evaluation of all of the comments on the LLEA coordination, the NRC has simplified the requirement. The NRC continues to believe that coordination with the LLEA is important, and the rule contains a requirement for coordination. However, the decision was made that several of the items, while good ideas, were better addressed in the guidance document and not in the rule itself. A written agreement and several of the coordination activities are not included in the final rule. Even if a written agreement had been reached, an LLEA will respond as it feels is appropriate to the particular situation.

Comment C36: One commenter objected to requesting the LLEA to provide updated contact information as it places a burden on the LLEA. Two commenters suggested that this only be a requirement if a facility is not served by a 911 system.

Response: The NRC agrees that it is not necessary to request contact information or updated contact information. Most licensees in the case of an actual threat would call 911 and not the contact. Additionally, no contact would be available 24/7. The provision is not included in the final rule.

Comment C37: Many commenters objected to the requirement that a licensee request the LLEA to notify it of degraded capabilities as unrealistic, unnecessary, unenforceable, and would probably violate LLEA ''need-to-know'' procedures. Some commenters felt that the requirement that the LLEA notify licensees of a degradation of their response capabilities was clearly outside the purview of the regulating agencies. Others noted that licensees have no authority over nonlicensed entities such as LLEAs. Commenters felt that the LLEA is better equipped to arrange for alternative response capabilities than would the licensee and that this would be an inherent part of LLEA organizational framework; some commenters asked what the direction was if a licensee was notified of a degraded LLEA response capability. Another commenter asked what the State was to do if notified that the LLEA was not cooperating in providing the degraded capability information. Commenters noted that it is inconceivable to believe that the LLEA would notify a licensee that their response capabilities have become degraded, not only because that would appear to be an open invitation to the criminal sector, but also, if capabilities are degraded, logically the LLEA would not have the capability to notify licensees. Commenters asked what they would do with the information if provided. One commenter suggested as an alternative that the licensee request the LLEA to confirm that it has a contingency plan in case of compromised response capabilities. Another commenter noted that it was more important for the licensee to discuss this issue with the LLEA during the coordination meetings. Another commenter noted that there is not prescribed action for the licensee to take if notified and questioned the purpose of the notification.

Response: The NRC agrees that many LLEAs may not want to provide information on degraded capabilities. The provision is not included in the final rule.

Comment C38: One commenter stated that the participation of licensees and LLEAs in drills and exercises was an unfunded mandate and should not be required. The commenter also questioned whether drills and exercises contribute to the security of the sources or the public health and safety. Two

commenters suggested removing this requirement as there is no requirement to conduct such drills.

Response: The NRC agrees in part and disagrees in part. The proposed rule did not require that drills and exercises be conducted. The rule did contain a provision that required the licensee to ask whether the LLEA would be willing to participate in drills and exercises. As there is no requirement to conduct drills and exercises, the NRC has removed this provision as suggested by the commenters. The NRC does note that drills and exercises can contribute to the public health and safety and the security of the material.

Comment C39: Several commenters felt that the requirement for a licensee to notify the regulatory agency if an LLEA declines to participate in coordination activities creates an unnecessary burden for the regulatory agencies that will now be required to notify the Department of Homeland Security or contact the LLEA directly to explain the importance of cooperating. Some commenters suggested that if NRC believes this is truly a critical issue, NRC should coordinate with the Federal Department of Homeland Security's Nuclear Sector Government Coordination Council to engage law enforcement from a broader perspective. One commenter asked what actions the NRC would take when notified and what the NRC would do if the NRC did not gain confidence that the LLEA would respond in an actual emergency.

Response: The NRC disagrees with the comment. The NRC believes it is vitally important for the licensee to coordinate with the LLEA, and the agency wants to know if the LLEA won't participate. There were instances during implementation of the orders where the NRC met with the LLEA to explain the importance of LLEA cooperation with the licensee. The State is not required to contact DHS or the LLEA if the LLEA does not want to participate in coordination activities. DHS does have training programs to educate LLEAs.

Comment C40: Two commenters objected to the requirement to coordinate with the LLEA every 12 months, noting that it took several months to set up a meeting for the coordination required by the orders. The commenter felt that, as there had been no events requiring contact with the LLEA and no changes to the security program, there was no need to meet annually. The commenter noted that both parties have plenty of work and are not just sitting around and focusing on this one agenda item. The commenters asked whether the licensee would be cited if the LLEA refused to meet on an annual basis.

Response: The NRC disagrees with the comment. The NRC believes that it is important to maintain contact with the LLEA. Turnover at both the LLEA and the licensee occurs over time and if contacts are not maintained, the knowledge obtained during the initial coordination is lost. The annual follow up does not need to be extensive. If the LLEA refuses to participate, the licensee should document the attempt. The licensee would not be cited as long as it had documented the attempt(s).

Comment C41: One commenter noted that the requirement to document coordination activities with the LLEA would now require regulatory agency inspectors to visit LLEAs to determine licensee compliance, resulting in longer inspection times and possibly creating a situation that may be interpreted by the LLEA as intrusive.

Response: It is not clear why the commenter feels that an inspector would be required to visit the LLEA to determine a licensee's compliance with the rule's coordination requirements under § 37.45. The licensee is required to document the coordination activities, and an inspector would be expected to review the documentation. An inspector may choose to contact the LLEA to gain a greater understanding of the nature of the coordination efforts. However, this rule does not require that an inspector contact the LLEA to determine licensee compliance with § 37.45.

Comment C42: Two commenters noted that the goals and objectives for coordination activities with LLEAs are admirable, but the commenters stated that this is an area where the NRC should consider taking concerted efforts to engage law enforcement communities to improve situational awareness now, rather than waiting for feedback from licensees regarding potential LLEAs refusing to cooperate. The commenters suggested that the NRC consider an outreach campaign aimed at direct communications with LLEAs to better understand their perspectives regarding these issues. Another commenter suggested a Federal outreach training program to LLEAs for radioactive materials incident response. The commenter noted that DOT has an outreach program for transportation incident response.

Response: During the security inspection process, the NRC inspectors have been contacting the LLEAs to both ensure that licensees have been coordinating and to improve the LLEAs understanding of the importance of providing a timely response. At this time, the NRC is not planning any additional outreach to LLEAs. However, the DOE has a program to provide LLEAs with additional training for responding to the attempted or actual theft of category 1 or category 2 quantities of radioactive material. The Global Threat Reduction Initiative (GTRI) program provides security personnel and local law enforcement with tools (*e.g.* radios, repeaters, and personal detection devices) and additional training to respond to a security incident. To ensure that both onsite and offsite responders understand how to respond to enhanced security system alarms, GTRI developed an alarm response training course, which is held at the Y–12 National Security Complex in Oak Ridge, Tennessee. This alarm response training also prepares responders to protect themselves and the public when responding to events involving radiological materials. The participants conduct hands-on training in a realistic setting using actual protection equipment and real radioactive sources. The courses include operational exercise scenarios that build on classroom instruction and allow response forces to exercise their own procedures during realistic alarm scenarios.

Comment C43: One commenter noted that not all events that occur are of a nature that an LLEA would have to be involved and questioned why it should be mandatory that an LLEA respond to events that could be handled by internal security.

Response: It is not mandatory that the LLEA respond to all events. The licensee is suppose to assess the event and contact the LLEA only if there has been an actual or attempted theft, diversion, or sabotage attempt. The language has been clarified.

Comment C44: One commenter questioned how the failure of the LLEA to coordinate fully with the licensee would impact the status of a license. The commenter noted that licensees should not be held accountable for noncooperation or lack of resources on the part of the LLEA. The commenter stated that it should be under the purview of the NRC or Agreement State to ensure that the LLEA works with the licensee in the requested manner.

Response: Failure of the LLEA to coordinate does not affect the status of the license, and licensees will not be held responsible if the LLEAs do not coordinate. Under § 37.45(b) and (c), licensees are only required to document their coordination efforts and notify their appropriate NRC regional office if the LLEA does not wish to coordinate. The NRC will contact the LLEA to

explain the potential consequences of the theft of category 1 or category 2 quantities of radioactive material and encourage the LLEA to participate in coordination activities with the licensee.

Comment C45: One commenter requested that the NRC add a subsection to clarify requirements for coordination by a licensee or permittee under a master materials license that has an onsite LLEA that would preclude unwarranted interpretations during a regulatory inspection about the extent that coordination must be documented. The commenter offered suggested language as follows: ''For a licensee or permittee under a master materials license with an on-site LLEA, coordination requirements in this subsection are considered to have been completed if the security plan and implementing procedures establish methods for LLEA response at the facility.'' Another commenter raised the issue of unnecessary documentation of coordination activities when the LLEA is part of the same organization that owns the radioactive material. The commenter noted that the lack of documentation activities should be seen as good news unless the LLEA refuses to respond to appropriate requests for assistance. The commenter also notes that burdening the police with detailed paperwork is an ''insult to their understanding of the risks inherent to their mission.'' This commenter also suggested adding a new subparagraph as follows: ''When the LLEA is part of the organization that owns and controls the Category sources, the documentation in § 37.45(a)(2)'' {was (a)(1)} ''is not required provided all the elements of good willful coordination are clear.''

Response: Even when the LLEA is on site, the licensee should conduct coordination activities. The coordination would likely be simplified but still needs to occur. The coordination activities to meet the requirements of § 37.45 need to be documented even if the LLEA is part of the same organization. The licensee would not need to document all interactions with the LLEA, only those necessary to meet the requirements. Note that it is not the LLEA that is required to document the coordination activities.

Comment C46: One licensee asked whether a written agreement with a third party service that provides off-duty local law enforcement agents on site at all times would be acceptable to demonstrate compliance with the LLEA coordination requirement. The commenter stated that the agents have full response and arrest capabilities while working at the facility.

Response: If the third-party service provides individuals that meet the definition of LLEA and the third-party service can provide a timely armed response 24 hours per day, then the third party service providers meet the requirement for LLEA coordination.

Comment C47: One commenter questioned what would be expected of the State if the LLEA did not respond to an event?

Response: The expected response would depend on the circumstances and would be up to the State. The NRC believes that it would be highly unlikely that the LLEA would not respond to an actual or attempted theft of radioactive material.

Comment C48: In the proposed rule, the NRC specifically invited comment on the requirement to contact the LLEA for work at a temporary jobsite. Commenters were requested to provide information on: (1) Whether there is any benefit in requiring that the LLEA be notified of work at a temporary jobsite; (2) whether notifications should be made by licensees for work at every temporary jobsite or only those where the licensee will be working for longer periods, such as the 7 day timeframe proposed in the rule; (3) whether 7 days is the appropriate threshold for notification of the LLEA or should there be a different threshold; (4) whether licensees can easily identify the LLEA with jurisdiction for temporary jobsites or whether this imposes an undue burden; and (5) whether LLEAs are interested in receiving these notifications. Eighteen commenters provided responses to the specific questions on this subject.

Of those that provided responses to the questions on LLEA notification at temporary jobsites, the majority indicated that there was no benefit to notifying the LLEA of temporary jobsites. Only one commenter indicated that there is some benefit for notification of work using category 1 materials and one noting some benefit for a temporary jobsite lasting longer than 30 days. Commenters indicated that temporary jobsites are unpredictable in nature and therefore unlikely to be a primary target. Commenters noted that in most cases the licensee does not know 3 days in advance where work might occur and that due to the nature of the job it is often not possible to determine the length of the job in advance. Commenters noted that the notifications may cause confusion for the LLEA and would likely be intrusive. Commenters indicated that the emergency 911 system is adequate in the case of a security event. One commenter noted that the LLEA would also need to be notified when the job ended. One commenter suggested that notifications go to a central location, such as the NRC or Agreement State, and then the central organization could coordinate with State and local police. The commenter indicated that this would reduce the confusion and workload on both the licensees and the LLEA and help to maintain a healthy working relationship and be more effective. Some commenters noted that clarification would be needed to address cumulative time where 7 days are not consecutive and to better define the boundary of a temporary jobsite for jobs along pipelines. Commenters indicated that it would be difficult to identify LLEA with jurisdiction over temporary jobsites, noting issues with overlapping jurisdictions, moving jobsites, offshore locations, etc. Commenters stated that this would impose a huge burden without meaningful benefit. Most commenters indicated that the LLEA would not be interested in receiving temporary jobsite notifications. Commenters indicated that LLEAs would respond in the case of an emergency whether there was an advance notification or not. No LLEAs provided comments.

In addition to those commenters that provided responses to the questions, 32 commenters provided comment on the issue of LLEA notification for temporary jobsites. Most of the commenters objected to the requirement to notify LLEA for work at temporary jobsites. Commenters thought that the requirement was unrealistic and created an unnecessary burden, both in personnel and operations. One licensee noted that its company had over 5,000 jobs a year that would meet the requirement and that in addition many jobs, that were to be less than 7 days, experience delays that are beyond the control of the company. Commenters noted that the paperwork for the notifications will be time consuming to produce and, if it is to be valuable, time consuming for LLEAs to read and comprehend. Many noted that there is no practical means to identify the appropriate LLEA, particularly in areas that the licensee is not familiar with, and in some cases a temporary jobsite might cover a very large area with several overlapping jurisdictions, and it can be difficult to determine which agency is the first responder. Commenters noted that many times licensees are notified of the necessity of work on the same day the work is

required and don't know 3 days in advance, with one commenter noting that only about 3 percent of its jobs are known 3 days in advance. Commenters noted that these jobs often involve repair of critical oil and gas infrastructure which could be delayed while attempting to determine which LLEA has jurisdiction and coordinating with them, creating significant cost to the industries with no benefit. One commenter suggested that, if the provision was retained, it be modified to require the notification be made within three business days subsequent to beginning work as this would alleviate some of the problems created by advance notifications.

Some commenters noted that the LLEAs do not want to receive these notifications and would be unprepared to receive the notifications. Some commenters thought that the contacts with the LLEA without possible response from the LLEA may accomplish nothing but aggravation and frustration for the LLEA. One commenter (a State) indicated that, based on a survey of LLEAs, the LLEAs want to know about a temporary jobsite, no matter how long the site will be used, so they can plan for emergencies. The commenter indicated that the LLEA would like a standardized form to be used by States that clearly indicates the high priority of the information. Many commenters noted that the 911 system is the best tool if there was an attempted theft and that responders would quickly respond once they realized that radioactive material was involved. Commenters noted that it is expected that the LLEA will respond to a security event in fulfillment of their responsibility to protect life and property and that in many jurisdictions LLEA resources are somewhat limited. Commenters felt that the NRC lacked a true understanding of the nature of the temporary jobsite work that is done or the concept of using the 911 system when law enforcement is needed. At least one commenter felt that the NRC was placing the licensee in a position that would likely result in unintentional violations to the rule. Commenters felt that due to the itinerant nature of temporary jobsites and being constantly on the move, it would be very difficult to plan a theft in the field setting. One commenter noted that licensees are already required to negotiate and pay for reciprocity, as well as inform the applicable State agency as to when and where operations are planned and the duration of the project and that expansion of this requirement to include local authorities was asking a lot.

One commenter suggested an alternative of requiring daily contact with the home office and noted that failure to contact would prompt an investigation by the home office which would lead to LLEA notification as appropriate. Commenters asked who will offer training to every jurisdiction and who will subsidize those jurisdictions, current local budgets being what they are.

Response: After reviewing the comments received on this issue, the NRC has decided not to include the LLEA notification for work at temporary jobsites in the final rule. While there is some limited benefit in receiving the notifications, the benefit does not outweigh the burden that the requirement would impose. Identification of the appropriate LLEA would not be easy. The notifications could also cause confusion among the LLEAs as to what they should do with the information. In the event of a theft, the licensees will likely call 911, and the LLEA will respond as appropriate to the call. Also, as pointed out by the commenters, companies often don't know where they will be working in advance. Locations, particularly along pipelines, shift consistently making it difficult to know who to contact.

Comment C49: One commenter suggested that instead of mandating the licensees to take on this burden, the Commission's approach should be to encourage licensees to offer LLEAs their expertise and offer some form of training to the local departments. The commenter noted that the Increased Control Orders require the licensees to establish their presence with LLEAs as the facilities clearly are a much more attractive target to an attack than the mobile fleets. The commenter suggested that an adjustment in the rule encouraging a closer relationship in this area would be more accepted by all parties involved and would not overly impact said parties financially or on a personnel basis. Creating a program that encourages and supports licensees and LLEAs working together would or could create close relationships that will have far more impacting and lasting results than calls to the departments advising them of work that is proposed to last more than 7 days.

Response: The NRC has not included the notification provision for work at temporary jobsites in the final rule, and there are no requirements for training affected LLEAs. See the response to comment C48. The NRC recognizes the benefits to licensees of having a close working relationship with the LLEA for the security of any jobsite, permanent or temporary. Licensees are free to take whatever actions they feel are appropriate to develop this type of working relationship.

Comment C50: One commenter noted that the temporary jobsite notification could be via email and that email is generally unsecured unless it is encrypted or sent as password protected attachments. The commenter noted that the rule does not contain any restrictions as outlined in Regulatory Issue Summary 2005–31.

Response: The provision for LLEA notification for temporary jobsites is not included in the final rule. See the response to comment C48.

Comment C51: Some commenters objected to the concept of a security zone because they believe it is abstract, nebulous, and unworkable in actual work environments of the types of licensees who must comply with the regulation, and unnecessary and burdensome with no benefit. Commenters felt that the concept would cause confusion. Commenters stated that it would add an unneeded term and concept that would likely lead to confusion and would add burden with little intrinsic benefit. The commenters noted that the licensees' procedures that have been put into place to meet the current orders create security and have been verified through inspections and that no change is necessary. Two of the commenters stated that the security zone concept was discussed during the orders working group process and that the concept was not incorporated in the orders. The two commenters indicated that this had the appearance of an attempt to incorporate in rule a concept that did not have consensus and was not incorporated after going through the orders working group process. One commenter noted that the industrial use of radioactive materials when used at its facility is essentially a security zone because facility access is restricted due to ITAR requirements. This commenter said it should be sufficiently secure to set up restricted areas based on the radiation level and monitor the material until it is secured in storage. One commenter noted that the increased controls are in place, and it was not aware of any situations that have occurred that now warrant the inclusion of a security zone designation.

Response: While working groups for the orders may not have been able to reach a consensus on an issue, this does not mean that the working group for the rule was unable to reach consensus. The 10 CFR part 37 rule working group had information available that was not available to the orders working group.

The 10 CFR part 37 working group considered the orders, lessons learned, implementation issues, inspection issues, recommendations from other reviews, as well as the comments on the preliminary rule language and proposed rule. The purpose of security zones is to isolate and control access to category 1 and category 2 quantities of radioactive material to protect them more effectively and deter theft or diversion. A security zone effectively defines where the licensee will apply these isolation and access control measures. It is thus a logical extension of the requirement in the Increased Control Orders that licensees ''control access at all times to [category 1 and category 2] radioactive material quantities * * * and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.''

Because the purpose of security zones is different from the radiation safety purposes of the restricted areas and controlled areas defined in 10 CFR part 20, the security zone does not have to be the same as either of these areas. Because measures to control access are required for both radiation protection and security, however, a licensee does have the flexibility to use an area required for radiation protection purposes to fulfill the required functions of a security zone.

Comment C52: One commenter noted that the security zone concept potentially has serious operational and financial repercussions and is expensive overkill. The commenter noted that adding continuous barriers could be extremely expensive and may introduce scattered radiation into labs that have very specific operational requirements. The commenter noted that isolating and controlling access does not appear to comply with the requirements for the physical barriers and that locks, cables, etc. would not isolate the same radioactive material in a security zone as required. The commenter noted that individuals could frequent the security zones but still be separated from the radioactive material due to the lock but that the rule requires that only authorized individuals have access to the security zones. The commenter stated that these two concepts seem to conflict with each other and if the common physical barrier concept is not acceptable, then many more licensees will fall under these requirements due to the aggregation of radioactive material. The commenter noted that it would cost over $200,000 to develop continuous barriers and redo calibrations, procedures, etc., if it can be done at all. The commenter suggested allowing the licensee to propose measures to compensate for the lack of a continuous barrier when that barrier would obstruct the use of the radioactive material for its intended purpose and when there is no available alternative.

Response: A continuous barrier is not the only method that a licensee can use to meet the requirement. Direct observation is also allowed, as is a combination of barrier and direct observation. A continuous barrier does not have to be expensive; it can be a metal cage or walls. The commenter seems to believe that unauthorized individuals cannot be in a security zone. This was not the intent of the rule. Unauthorized individuals can have access to the security zone as long as they are escorted by an approved individual. The rule language has been clarified, and additional information has been added to the implementation guidance. The licensee can establish the boundaries of the security zone as appropriate for a particular facility; the rule does not dictate where the security zone is located. In most cases, whatever a licensee used to meet the orders will also meet the 10 CFR part 37 requirements. The Increased Control Orders did not use the term ''security zones'' but the concept was a factor.

Comment C53: One commenter expressed concern with the security zone concept at temporary jobsites. The commenter noted that implementation would require additional personnel and expense, and the security zone will require areas that will be larger than the radiation areas. Another commenter noted that the concept could cause confusion in certain types of jobsites where aggregation of multiple low level sources would constitute a security zone. The commenter provided the example of petrochemical plants that use low level sources to monitor product levels, noting that aggregation of these sources will constitute a security zone which would require direct control by approved individuals at all times and\or intrusion detection systems and physical barriers. The commenter felt that this could mean that the entire plant would be a security zone, and only trustworthy and reliable employees could enter.

Response: The NRC disagrees with the comment. It is not clear why the security zone concept would result in additional personnel and expense, or why it will require security zones larger than the radiation areas at either temporary or permanent jobsites. A security zone effectively defines where the licensee will apply the isolation and access control measures required under the Increased Control Orders. The NRC is unaware of any operating conditions that would require more space for compliance with any of the additional measures required by this rule. The licensee establishes the security zone, and because measures to control access are required for both radiation protection and security, a licensee has the flexibility to use an area required for radiation protection purposes to fulfill the required functions of a security zone. The NRC is unaware of any petrochemical or other industrial plants that have designated the entire plant as a radiation safety area for their radiography or other sources, and the NRC sees no reason why such licensees or licensed service providers would need to designate the entire plant a security zone for the purposes of this rule. A licensee could of course choose to do so.

Because the concept of aggregation is no different from the concept of aggregation and co-location under the orders, it is not clear why the application of security zone requirements would result in confusion at jobsites where multiple low-level radiation sources are aggregated.

Comment C54: Several commenters requested clarification on what constitutes a physical barrier and recommended that physical barrier be either defined or guidance provided. Another commenter suggested changing the term to physical security barrier to avoid confusion with the definition of physical barrier in 10 CFR part 73. One commenter suggested the physical barrier is where the security zone has been established.

Response: The NRC has revised § 37.47(c)(1) to provide additional clarity. This provision now notes that a physical barrier is ''a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone.'' Additional information has also been added to the implementation guidance.

Comment C55: One commenter asked how many security zones needed to be designated and noted that the rule is unclear for those licensees within fixed facilities.

Response: The licensee is responsible for establishing security zones. The number of security zones established by a licensee is dependent on the needs of the licensee. A licensee may have only one security zone or may have several.

Comment C56: One commenter recommended including a provision in § 37.47 that exempts the security zone requirements for category 1 or category 2 quantities of material stored in casks

or packages that require specialized equipment to move, open, or access, if the equipment needed to access the material is unavailable. One commenter noted that the continuous monitoring of security zones and detection capability is a significant additional cost without any benefit for category 1 and category 2 materials that may be stored at a nuclear facility in a concrete mausoleum or within individual concrete vaults that require heavy equipment, such as a crane, to access. One commenter stated that clear criteria for applicability would be needed to implement security zones. The commenter offered the example of multiple high integrity containers with lids weighing 10 tons, each inside a shield, stored inside a fenced common area which contains, in the aggregate, a category 1 or category 2 quantity of radioactive material and no crane in the area to lift the shield container lid. The commenter stated that establishing a security zone for the common storage area is required and that this is excessive.

Response: A licensee can always request an exemption for material or items that it believes should be exempt from all or some of the 10 CFR part 37 requirements. Exemptions are handled on a case-by-case basis. Some of the material addressed by this comment is covered by the partial exemption in § 37.11(c). *See also* response to comment A20.

Comment C57: One commenter noted that large manufacturing and distribution facilities will have several security zones with significant quantities of category 2 sources in storage and that it would be impossible to perform an effective physical check on a weekly basis. The commenter also noted that a weekly check is not consistent with the ALARA principle. The commenter noted that putting tamper indicators on each source/device would be cost prohibitive and require a significant amount of time and personnel dose to install, monitor, and subsequently remove. The commenter noted that sources are constantly transferred from one container to another in the course of manufacturing, storage, and preparing for shipment and receiving. The commenter requested clarification as what ''other means'' would cover and/or be acceptable in § 37.49(a)(3)(ii). The commenter noted that under the orders it has a method approved by the Regulatory Authority to ensure that the category 2 radioactive material is present and that the process is considered SGI–M information. The commenter wanted to know how such pre-existing compliance agreements would be handled under the rule. The commenter also requested clarification on the situation where there are individual sources that are each less than category 2 but when they are collocated/aggregated the total quantity exceeds category 2, whether the individual sources need to have this physical check performed. The commenter noted that depending on the answer, the quantity of sources affected at a large facility could be more than a thousand and that this would affect many smaller facilities including medical institutions, universities, and gauging. The commenter noted that the requirement has significant implication and needs to be carefully considered to avoid unintended adverse consequences.

Response: The licensee is not required to conduct a weekly physical inventory of the category 2 quantities of radioactive material; other methods can be used. The other means allowed by the rule are intended to provide the licensee with the flexibility to use the method that works best for its facility. A licensee could use methods to detect removal of the material from the security zone. If a licensee is currently using an agreed on method, the method should continue to meet the intent of the requirement. Any of the methods deployed for category 1 materials could also be used for category 2 materials. Additional information is available in the implementation guidance.

Comment C58: One commenter requested clarification on where an NRC security zone at a licensee site and a DOT security zone for transport take effect for shipments leaving a facility. One commenter noted that the NRC should clarify at what point the shipment is under DOT rules and not under 10 CFR part 37. The commenter asked if this occurs once a shipment of category 1 or category 2 radioactive material is prepared (DOT paperwork in possession of the driver) but still on a licensee's site. The commenter noted that a temporary security zone cannot accompany the shipment until it physically exits the licensee's property or jobsite.

Response: It is the licensee's responsibility to implement the requirements of 10 CFR part 37 throughout the shipment regardless of the location.

Comment C59: One commenter noted that § 37.47(d) is not clear whether the regulation requires a physical presence for maintaining continuous surveillance, or whether the continuous surveillance may be by remote monitoring. The commenter also noted that the wording implies that the licensee must provide an approved individual and questioned whether the service provider approved under § 37.29(m) is permitted to provide the continuous surveillance while working.

Response: The continuous surveillance may be by remote monitoring. If a service provider has been approved for unescorted access, then the individual can provide the surveillance. It is noted that if that individual is conducting work of some sort, it may be difficult for that individual to also maintain continuous surveillance.

Comment C60: One commenter noted that § 37.47(d) requires additional measures for security zones for category 1 radioactive material during maintenance, source receipt, etc. when security zones are compromised and that permanent security zones are required in § 37.47(c) for both category 1 and 2 radioactive material. The commenter questioned why the additional measures are required only for category 1 radioactive material if the security zones are compromised during certain times. The commenter noted that it appears that the isolation requirements for radiation protection under restricted, radiation, high radiation and very high radiation areas provide the same or better levels of security than those described (*i.e.,* continuous physical barriers that allow access to the security zone only through established access control points; or licensees could exercise direct control of the security zone by approved individuals at all times). The commenter noted that you do not need to have duplicate regulations that apply to category 1 and category 2 quantities of radioactive material.

Response: The additional measures are only required for the category 1 material because these materials are considered higher risk than the category 2 materials. A security zone can be the same as the area used for radiation protection if it meets the requirements of part 37. The measures in part 37 are intended to prevent/detect theft of the material and not to protect an individual from radiation exposure.

Comment C61: One commenter noted that § 37.47(d) indicates that during those identified periods an approved individual must be provided to maintain continuous surveillance of the sources. The commenter noted that ''approved individual'' is not defined. The commenter also noted that depending on the design of the facility, multiple approved individuals may be necessary to adequately monitor activities throughout a site, which does

not appear to be clearly required by the rule.

Response: The NRC agrees with the comment and has revised the rule to clarify that an approved individual is someone approved for unescorted access and to reflect that more than one individual may be necessary.

Comment C62: One commenter recommend deleting the phrase ''without delay'' from § 37.49(a)(1) as the phrase is unrealistic during normal business hours. The commenter noted that unauthorized access whether actual or attempted would only be detected ''without delay'' if individuals were in the vicinity and could witness the access or attempt to access. One commenter stated that the monitoring, detection and assessment requirements in § 37.49 are unduly onerous. The commenter indicated that the requirement to maintain the capability to detect without delay attempted unauthorized entry into the security zone should be eliminated or defined in a more concrete manner for the sake of clarity in enforcement. One commenter asked how much time is allowed for response when an unauthorized entry into the security zone is discovered. The commenter also asked for clarification on the meaning of without delay. One commenter requested clarification on what is meant by detect without delay all unauthorized entries into a security zone. The commenter asked if the licensee was to respond immediately and also asked how this could be accomplished when using an alarm monitoring service. The commenter recommended removing ''without delay'' from § 37.49(a)(1). The commenter stated that ''without delay'' is unrealistic during normal business hours as a business' security system will not be set to alarm. The commenter noted that areas that may contain category 1 or category 2 quantities may be locked and unoccupied but not monitored. The commenter noted that unauthorized access whether actual or attempted would only be detected ''without delay'' if individuals were in the vicinity and could witness the access or attempt to access.

Response: The NRC disagrees with the comment. The NRC notes that the orders contain a similar provision to immediately detect, assess, and respond to unauthorized access. ''Without delay'' means promptly or immediately. The purpose of security provisions is to quickly detect and respond to any potential theft of the material. The NRC further notes that, if a licensee is merely locking the material in a room and not implementing any other security provisions, they would not be in compliance with the orders or the rule. No change has been made to the rule.

Comment C63: One commenter noted that the intent of § 37.49(a)(1), in the event of a power failure or tampering that affects the monitoring and detection system, should be to provide (1) a reliable power back up or (2) prompt notification of the power failure/tampering such that the licensee will take immediate corrective action to restore the power and provide for alternate monitoring and detection that meets the requirements of the part until the system is repaired. One commenter asked what the NRC's expectations were for implementation of the security requirements in an emergency, including the expectation as to how long backup systems were required to operate. The commenter asked how a licensee is supposed to implement these requirements when there are no provisions for individuals to even reenter a disaster area.

Response: The backup power for the monitoring and detection system needs to be available until power is restored or other measures need to be used such as direct surveillance. Disaster situations such as flooding or earthquakes that prevent entry to the facility would be addressed on a case-by-case basis.

Comment C64: One commenter stated that § 37.49(a)(2)(ii) should contain a more accurate description such as ''* * * alert personnel within audible range of the alarm.'' Another commenter noted that ''nearby'' needed to be clarified as NNSA representatives recommended only silent alarms in the area immediately surrounding category 2 sources.

Response: The NRC believes that the language is appropriate and has not revised the rule. Additional information is provided in the implementation guidance document.

Comment C65: Two commenters recommended adding a 4th method to § 37.49(a)(3)(i) to allow security zone intrusion detection alarms. The commenter explained that when the intrusion detection system is monitoring the security zone, an attempt to gain unauthorized access into the security zone results in an alarm that is equated to an attempt to remove or sabotage the material. The commenter noted that during normal business hours when an intrusion detection alarm to a security zone is disabled the licensee prevents unauthorized access into security zones with locks, physical barriers, and surveillance or some combination of each. The commenter stated that it is during these periods that a tamper-indicating alarm or radiation detection alarm or video surveillance could alert the licensee of an unauthorized attempt to remove radioactive material from the security zone. The commenter stated that, if the method is not added, revision is needed in the implementation guide that allows the licensee to rely on its main site wide intrusion detection system when the intrusion detection system is activated, the facility is not occupied by the licensee, AND the intrusion detection system can detect access to the security zone.

Response: The NRC disagrees with the comment that a 4th method needs to be added to the rule. Although this is not the preferred method, the situation described in the comment is not prohibited under the rule. Additional information has been added to the implementation guidance.

Comment C66: One commenter asked whether a tamper device was sufficient to verify the presence of material or would a weekly check still be necessary. One commenter noted that a weekly verification should only be performed for sources/devices that do not have tamper-indicating devices. Another commenter stated that the weekly check was too prescriptive and asked about the basis for the timeframe. Another commenter stated that a weekly check was not adequate. The commenter noted that the orders require the licensee to respond immediately to any actual or attempted theft, sabotage, or diversion and that a weekly check would allow the material to be missing for up to a week before it is discovered. The commenter suggested that § 37.49(a)(3)(ii) be revised to read: ''For category 2 quantities of radioactive material, the licensee must maintain control of licensed material, secure it from unauthorized removal or access, and without delay, detect and recover all stolen, missing or lost licensed material.'' One commenter stated that verification of the radioactive material may not be appropriate for sources housed in devices. The commenter suggested requiring verification ''to ensure that the source/device is present'' and suggested that this verification could be made by means of a camera in the room housing the device/source.

Response: Category 2 quantities of radioactive material are considered risk-significant and if not in use, the material needs to be checked to make sure it is still present. Contrary to the comment, the rule is not prescriptive. The rule does not require that a licensee conduct a physical check. The rule allows the licensee to pick a method that best fits its needs; a physical check is one of the methods that could be used. There are

many other methods that could be used to conduct the verification. Tamper indicating devices are considered adequate to meet the requirement. The licensee can also use methods to detect removal of the material.

Comment C67: One commenter suggested deleting the weekly verification for category 2 quantities in § 37.49(a)(3)(ii) and include the category 2 material in the category 1 material requirement for continuous surveillance. The commenter noted that the provision implies that it may be acceptable for a missing category 2 quantity of material to go undetected for up to a week when this is clearly not the case.

Response: Category 1 quantities of radioactive material are considered higher risk than category 2 quantities of radioactive material. Therefore, there are more requirements on the category 1 material. The commenter is correct, however, that the NRC does not mean to imply that it is acceptable for missing category 2 materials to go undetected for a week. A weekly verification is just one of several acceptable methods to make sure that unauthorized removal of the material has not occurred. Each licensee must determine its own compliance strategy to meet the security requirements of this rule, but the rule provides significant latitude for each licensee to comply in a way that optimizes its individual operating requirements.

Comment C68: Two commenters stated that the monitoring and detection requirements of the security program need to be more prescriptive, with a minimum requirement for electronic sensors and a detection system linked to an onsite or offsite monitoring facility. The commenters did not believe that allowing monitoring and detection to be performed only by visual inspection or direct visual surveillance was adequate. The commenters noted that the concepts of detection, delay, and deterrence are best implemented through multiple tiers of security. The commenters stated that in the scenario of armed terrorists with explosives attacking a facility, reliance on individuals to be the sentinels would allow the security program to be defeated rather easily.

Response: While the NRC agrees that defense in depth is always a good practice, the NRC believes that allowing direct visual surveillance is appropriate. The NRC attempts to balance the burden of imposing additional requirements against the risk of the material and the added protection a measure provides.

Comment C69: One commenter stated that the requirement to have a means to detect unauthorized removal of the radioactive material from the security zone was unnecessary and would create a huge burden to establish. The commenter also noted that the requirement does not even account for the fact that the alarm has to be monitored or by whom.

Response: The purpose of the security program is to detect and prevent unauthorized removal of the category 1 and category 2 quantities of radioactive material. The provision in question does not require an alarm. If alarms are used, the licensee has flexibility in determining who conducts the monitoring and who responds.

Comment C70: One commenter asked what the NRC's expectation was for implementation of the requirement to immediately detect any attempted unauthorized removal through the use of electronic sensors linked to an alarm. The commenter wanted to know if the electronic sensors are to be mounted to the actual source, hot cell, or storage area. The commenter noted that there are numerous ways to shield radioactive material, therefore, the method has to be able to detect an unauthorized removal of a shielded container, and using a building or area alarm is specifically not allowed.

Response: The NRC assumes the commenter is referring to the requirements in § 37.49(a)(3). This requirement is in addition to the requirements in §§ 37.49(a)(1) and 37.49(a)(2). Licensees must be able to detect the unauthorized removal of a category 1 source. Licensees can choose any method to detect unauthorized removal. Some methods that the licensee may use to meet this requirement include, but are not limited to, the following:

- Alarming electronic tamper-indicating device;
- Alarming radiation detector; or
- Visual surveillance by an approved individual.

If a licensee uses electronic tamper-indicating alarms, the alarm should be capable of alarming either when an attempt is made to remove a category 1 quantity of radioactive material from a device, or when an attempt is made to remove the device itself. The tamper-indicating alarms should be armed at all times, except during periods of maintenance.

Comment C71: One commenter stated that it is an unreal expectation that licensees can assess an attempted unauthorized entry and that the requirement should be removed as there is no resulting gain in security. The commenter noted that this increases the surveillance burden on licensees to monitor not just access but attempted access. As an example the commenter noted the situation where someone walking by tries to open the door and the licensee would be required to be able to detect that and assess. For the same reasons, the commenter stated that the requirement to respond to attempted unauthorized access should also be removed. Another commenter felt that the requirement was too broad. This commenter also noted the situation where someone (including an inspector) tries a locked doorknob of a secured area. The commenter noted that there is no point in responding to this sort of challenge to the system as long as the door remains locked as there is no security benefit gained by responding to this type of situation. The commenter stated that to prevent and reduce unnecessary responses to this sort of trivial challenge, a continuous watchman would be needed or a locked door outside the security zone to prevent access to the boundary of the security zone to keep individuals away from the security zone. The commenter suggested the following change to the rule text: ''The licensee shall immediately respond to any action that breaches the perimeter of the Security Zone.'' One commenter noted that § 37.49(d) requires the licensee to immediately respond to any actual or attempted unauthorized access in addition to requesting an armed LLEA response. The commenter noted that presumably this means the alarm service will notify the LLEA on behalf of the licensee as requiring the licensee to physically respond could put them in harm's way should the intruder be armed. The commenter also asked what other actions the licensee should take (*i.e.,* do surveys, inventory material, etc.).

Response: The NRC disagrees with the comment. The NRC believes that it is important to assess the attempts to gain unauthorized entry. An individual could test the system before an actual break-in to steal the material.

Comment C72: One commenter pointed out that the NRC supported and recommended that licensee's volunteer to participate in the NNSA GTRI program. The commenter noted that the rule does not acknowledge or differentiate its requirements for fixed facilities which have completed or are in the process of completing participation in the GTRI and that the NRC should acknowledge the differences between facilities that merely meet the NRC requirements and those that have the robust security provided by the GTRI. The commenter stated that licensees will be unable to

meet specific requirements prescribed in proposed part 37.

Response: The NRC does support the GTRI program that provides security upgrades to licensee facilities. However, all licensees are required to meet all of the requirements of 10 CFR part 37 regardless of participation in the GTRI program. Licensees that participate in the GTRI program may take credit for those upgrades that meet the 10 CFR part 37 requirements.

Comment C73: One commenter asked how long the continuous (primary or alternative) communication capability must continue to be operable. The commenter asked what arrangements need to be made to maintain the capability in any emergency. The commenter noted that there is no practicable means to implement this requirement as no communications systems work reliably for many hours or days, particularly if there is no power available, nor personnel allowed in the area to start a generator.

Response: During most emergencies, the licensee would be expected to maintain operability of either the primary or alternative system throughout the emergency. Disaster situations such as flooding or earthquakes that prevent entry to the facility would be addressed on a case-by-case basis.

Comment C74: One commenter noted that guidance on allowable dose limits should be added to § 37.49(d) for LLEA first responders. The commenter noted that most licensees are probably following the EPA's Protective Action Guidance of 25 rem whole body dose for life-saving actions and protection of large populations and that it would be helpful to have guidance on what to plan for, as part of LLEA training.

Response: The NRC disagrees with the comment and notes that guidance does not belong in the regulations. First responders are subject to the dose restrictions in State or Federal occupational safety regulations.

Comment C75: Several commenters suggested revising the frequency of the testing, maintenance, and calibration requirement. One commenter questioned the technical basis to require operability and performance testing of intrusion alarms and communication systems every 3 months and asked if the frequency was supported by industry data or a probabilistic risk analysis from the nuclear power industry. Another commenter stated that the test frequency for a device should have a relationship to the device's known failure rate. Another commenter stated that the requirement was extremely vague, questioned what standard things are to be tested and calibrated, what performance standard should be used, and noted that the timeframe was arbitrary. The commenter suggested that annual testing would be more consistent with other requirements. One commenter suggested every quarter at intervals not to exceed 5 months. The same commenter also suggested adding ''Equipment without a known failure mechanism shall be tested after initial installation and at a frequency not to exceed 10 years.'' One commenter suggested a monthly frequency, another suggested an annual frequency. One commenter stated that testing should be more frequent than quarterly but did not specify a timeframe. One commenter suggested testing every 6 months and noted that testing required 40 man-hours to complete. One commenter stated that any testing should include verification of the notification process to the responding individuals, including the LLEA, on at least an annual basis. One commenter recommended an annual requirement to exercise the assessment and response portions of the physical protection systems including an invitation to the LLEA to participate if reasonable to do so. One commenter stated that an annual requirement should be included that exercises the assessment and response portions of the physical protection systems.

Response: The NRC reevaluated the testing frequency. The requirement has been changed to allow the licensee to conduct the maintenance and testing at the manufacturer's suggested frequency. The manufacturer's suggested frequency would presumably account for known failure rates. If the manufacturer does not suggest a frequency, the testing must not exceed 1 year.

The NRC agrees that exercising the response portion of the security plan is a good practice, and we encourage licensees to exercise their plans with the LLEA. However, requiring licensees to exercise their response plans may be too burdensome for small licensees with less complex security plans.

Comment C76: One commenter stated that the rule and guidance should allow licensees to limit testing of alarms, associated communication systems, and other physical components of the security system to those alarms, systems, and components necessary to meet the requirements. The commenter pointed out that testing all alarms, systems, and components quarterly is a long-term financial burden and could result in licensees removing all unnecessary alarms, systems, and components. The commenter noted that requiring only testing of necessary equipment leaves the requirement open for interpretation but that performance-based regulations should allow for a risk-based analysis. The commenter stated that testing of all alarms places an unnecessary burden on licensees and will encourage licensees to minimize the number of alarm points in a system which is counter to the intent of this regulation. Testing of necessary alarms will show that the system is functioning appropriately. Another commenter noted that some devices may require partial disassembly of the equipment for testing and that repeated disassembly and reassembly for testing purposes could lead to premature failure or wear on components. The commenter suggested that internally installed detection devices be allowed to be tested on an annual basis, which could coincide with an annual preventive maintenance of the equipment. One commenter noted that the rule needs to be modified to indicate what testing is required. One commenter requested that the following be addressed in the discussion when the final rule is published. If an alarm system/device is removed/de-energized from service because the ''individual with overall responsibility for the security program'' deemed the device unnecessary, obviously there are no testing/maintenance requirements; however, if the device is deemed unnecessary, but remains energized, must testing/maintenance be performed and documented?

Response: The NRC agrees with the comment. The licensee is only required to maintain and test those components that it relies on to meet the security requirements of 10 CFR part 37. *See also* the response to C75.

Comment C77: Three commenters recommended removing the requirement for calibration from § 37.51. One commenter noted that there are procedures to test and maintain these systems, but the term calibration seems out of place. Another commenter questioned how you calibrate an intrusion detection system. Several commenters requested clarification on what is expected beyond maintenance and testing. One commenter suggested changing calibration to appropriate operational checks. The commenter noted that true calibration of radiation monitors would expose staff to unnecessary radiation dose.

Response: The NRC agrees with the comment and has removed the calibration requirement. Testing the operability of a system is sufficient to ensure that the equipment is operational and able to serve its function. Some of the equipment, such as meters, relied on for safety may be calibrated, but some

equipment would not be calibrated as the term is typically considered.

Comment C78: One commenter stated that it was not clear what is expected for compliance for the maintenance, testing, and calibration requirement. Another commenter asked what was considered acceptable maintenance, testing, and calibration.

Response: The licensee must ensure that the intrusion detection system (IDS) is operational and capable of performing its required function. To maintain functionality, licensees must periodically test the IDS and perform maintenance on malfunctioning components. The testing program is considered acceptable if the IDS operates in a manner consistent with the licensees' physical security plan. Licensees will be required to test the entire IDS or components of the IDS at the frequency specified by the manufacturer or at least annually. The licensee may choose to test the entire IDS or components of the IDS throughout the 12 months.

Comment C79: In the proposed rule, the NRC specifically requested comment on whether an exemption for disabling vehicles should be provided in certain hazardous situations. Commenters were requested to provide information on: (1) Whether relief from the vehicle disabling provisions should be provided; (2) any problems experienced in implementing this aspect of the Increased Controls; (3) whether there should be an exemption written into the regulations or should licensees with overriding safety concerns be required to request an exemption from the regulations to obtain relief from the provision; (4) whether any exemption should be a blanket exemption or a specific exemption for the oil and gas industry; and (5) whether the disabling provision conflicts with any Occupational Safety and Health Administration (OSHA) requirements or any State requirements. Fourteen commenters provided responses to the specific questions on this subject.

Of those that provided responses to the questions on the exemption for disabling vehicles when a mobile source is in or on the vehicle, the majority supported providing some sort of relief from the vehicle disabling provisions where there is a potential threat due to the work environment, such as a refinery or oil field. Only one commenter opposed providing relief. A couple of commenters did indicate that they had had problems in implementing the vehicle disabling requirement under the Increased Controls, some commenters noted that the provision was in opposition to the facility safety rules. A couple of commenters noted that the requirement was in conflict with OSHA and/or State requirements. On the question of whether an exemption should be written into the regulations or handled on a case-by-case basis, the commenters were split, but a slight majority favored writing the exemption into the regulations. Those supporting the exemption being written into the regulations noted that providing an exemption on a case-by-case basis creates a burden on the licensee to prepare the request and on the regulatory agency to review the request. One of the commenters supporting the regulatory exemption still felt that the licensee should provide adequate justification for claiming the exemption. Those not supporting the regulatory exemption felt that the case-by-case review would allow the regulator to review whether the exemption was actually warranted. Two of the commenters stated that the requirement should be removed as the requirement to remove the ignition key is not warranted and unnecessary. On the question of whether an exemption should be specific for the oil and gas industry or be broader, most commenters supported a blanket or broader exemption. One commenter suggested a blanket exemption for all category 2 sources. On the question of whether the disabling provision was in conflict with OSHA or any State requirements, three commenters indicated a possible conflict but did not provide any specifics.

In addition to those that responded to the specific questions, five commenters provided comments on this topic. One commenter noted that the requirement for disabling mobile sources presents safety concerns within a refinery or petrochemical plant. The commenter noted that individuals must be able to quickly evacuate the site in the event of an emergency and that unoccupied vehicles must be able to be moved by other evacuees or emergency responders. The commenter noted that requiring a secondary securing device other than the key from a vehicle prevents the easy movement of the vehicle and compromises safety in the event of an emergency. One commenter indicated that relief should be provided on an as-needed basis. Another commenter noted that there is a possibility that an individual using a mobile device needs to evacuate an area quickly and that using a disabling device could jeopardize the health and safety of the individual. The commenter suggested the following language: ''For devices in or on a vehicle or trailer, the licensee shall secure the vehicle or trailer containing the device from theft when not under the direct control of the licensee. This may be accomplished by removing the ignition key and arming a vehicle alarm system, or through the use of disabling device or by the removal of component that would result in the inability to operate the vehicle or trailer.'' One commenter stated that further guidance was necessary on what was meant by disable and that the commenter assumed that the disabling was temporary. One commenter indicated that any exemption should be broader than just for the oil and gas industry. One commenter recommend revising § 37.53(b) to allow credit for removing the key from the ignition and maintaining the key with the individual. The commenter noted that a disabling device could add additional risks to the worker; for instance, if the device fails, the individual may become stranded, or it may slow emergency egress.

Response: After consideration of the comments on this issue, the NRC has decided that an exemption should be added to the regulations instead of doing reviews on a case-by-case basis. Requiring licensees to submit an application for an exemption that would in most cases be approved imposes unnecessary burden on both the licensee and the agency staff. The NRC has also decided that the exemption should be broader than for just the oil and gas industry as there are other situations where a similar health and safety issue may arise. The NRC has revised § 37.53(b) to provide flexibility for situations where the health and safety requirements for a site prohibit the disabling of the vehicle.

Comment C80: One commenter indicated that the terms ''mobile'' and ''portable devices'' are used differently in 10 CFR part 37 than elsewhere in the regulations. The commenter stated that the NRC should change the terminology or the requirements be changed to be applicable to already defined mobile and portable devices.

Response: The NRC disagrees with the interpretation that the terms ''mobile'' and ''portable devices'' are used differently in 10 CFR part 37 than elsewhere in the regulations. The usage of the terms in 10 CFR part 37 is in agreement with previously issued NRC guidance. Specifically, the Increased Controls Question and Answer #159, provides guidance for definitions for ''portable'' and ''mobile'' as provided by the American National Standard for Gamma Radiography.

Comment C81: A few commenters suggested a change to the timing of the program reviews. Commenters

suggested an annual frequency not to exceed 14 months between the dates of the reviews, a timeframe of 15 months, a timeframe of 8 to 15 months, and language similar to § 20.1101 of periodically (at least annually). The commenters noted that this would provide some flexibility to allow for circumstances beyond the control of the workforce. One commenter noted that the program review could be eliminated and included under § 20.1101(c). One commenter stated that the review should include a requirement for the licensee to summarize those occasions where an unauthorized access resulted in activation of the monitoring and detection systems, but the licensee's assessment showed no actual or attempted theft or diversion of radioactive material as such alarms could be indicative of a 'probe' to test or evaluate a licensee's response by a potential intruder.

Response: The NRC agrees with the comment and has revised the language for the program review to be consistent with § 20.1101. The use of consistent terminology between the safety and security programs should enhance the licensee's understanding of the requirement. The NRC does not believe that it is necessary to add additional detail on what must be included in the program review.

Comment C82: One commenter noted that § 37.55 introduces the term ''radioactive material security program'' which should be clarified and consistently used in the regulations.

Response: The concept of the security program is introduced in § 37.41. The NRC believes that the term has been used consistently in the regulations and that the concept is clear. The implementation guidance contains information on the security program.

Comment C83: One commenter requested clarification on what radioactive materials should be included in the security program review.

Response: Part 37 only applies to category 1 and category 2 quantities of radioactive material. The security program review would only address the security of the category 1 and category 2 quantities of radioactive material.

Comment C84: One commenter indicated that the LLEA required it to file Non-Residential Burglary Alarm Registrations for each room in which an irradiator is housed (and to which they are expected to respond in the event of an alarm). The commenter noted that the LLEA has indicated that an LLEA response is deemed false if no evidence of criminal activity is found, in which case a ''False Alarm Notice'' will be served, including penalties escalating up to $4000 for requested LLEA responses that are judged to be false. The commenter noted that this places the licensee in a very bad position to attempt compliance with this regulation and risk fines from the LLEA. The commenter noted that there does not need to be evidence of criminal activity for the licensee to perceive a threat to its facility, and appropriately request LLEA response. The commenter requested that NRC conduct outreach to the LLEA community with the intent of clarifying NRC's expectations on this topic.

Response: Section 37.57 states that the licensee shall immediately notify the LLEA after determining that an unauthorized entry was an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. The NRC believes that such an unauthorized entry would likely constitute criminal activity. Furthermore, suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material would also constitute suspicion of criminal activity. When coordinating with the LLEA, the licensee must explain that it will request a timely armed response to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

Comment C85: One commenter requested that §§ 37.41 and 37.49 be revised to reflect that a licensee is restricted in detection and assessment by available technology and resources.

Response: The NRC does not believe the change is necessary. The requirements do not specify a technology, and the licensee can change the method used to meet the requirements whenever it wants, as long as the plan is updated and training conducted on the revised plan.

Comment C86: One commenter expressed concern that the vocabulary was not consistent with part 73 and that it was unclear exactly what the rule required from a security standpoint in §§ 37.41(b) and 37.49.

Response: The commenter is correct that the terminology between 10 CFR parts 73 and 37 may not be consistent. Part 37 does not have any requirement for a design basis accident and pertains to less risky materials. Part 37 applies to a different type of material and licensee in most cases. The terminology used in 10 CFR part 37 is geared for a materials licensee and not a reactor or fuel cycle facility. Guidance for implementing 10 CFR part 37 is contained in the implementation guidance.

Comment C87: One commenter stated that the proposed regulations, as applied to Gamma Knife radiosurgery units, do not give sufficient weight to engineered controls. The commenter felt that the greatest risk was during source exchange, which only occurs every 5 to 7 years, and not from someone obtaining access to the equipment overnight or on a weekend. The commenter further stated the opinion that there is almost no danger during the ordinary operation of the equipment to treat patients.

Response: The NRC acknowledges that accessibility of a category 2 source(s) depends on the design of the device containing the source(s) and the means used to gain access to and possibly remove the source(s). However it is anticipated that an adversary will use whatever means is available to gain access to and possibly remove a source. The category 2 designation has no basis in regard to the time it would take to remove a source from the device in which it is contained. The security program is designed to deny an adversary the opportunity to gain access to a category 2 source. It is reasonable to expect that overnight and weekend periods would provide an opportunity to an adversary.

Comment C88: One commenter stated that the requirement limiting unescorted access to approved individuals would appear to preclude the treatment of patients with a Gamma Knife radiosurgery unit since the patient is required to be unescorted in the treatment room due to the high radiation levels, and the treatment room would normally be considered to be the security zone. The commenter noted that closed circuit television is used to monitor the patient rather than line-of-sight observation, and that this could be used in place of human escort for those individuals needing entry to the treatment room.

Response: A patient undergoing treatment is considered to be an escorted individual. Closed circuit television used to monitor the patient meets the requirements of §§ 37.45 and 37.47.

Comment C89: One commenter stated that for a Gamma Knife radiosurgery unit, individuals subject to background investigations should be defined as those who have the key or pass code for the treatment room door and the ability to turn off the security system and not the personnel who may need access to a patient on treatment day. The commenter stated that individuals with the keys or pass code are the ones that can enter a room and have access to the unit for a long enough time, such as outside of normal treatment days, to

remove any or all of the radioactive sources.

Response: Gamma Knife radiosurgery is typically performed by a team of individuals. The licensee has the option of escorting those team members not authorized for unescorted access. For example, the licensee may decide to grant unescorted access to authorized medical physicists and have them provide escorted access for physicians, nurses, technologists, etc.

Comment C90: One commenter noted that it is important that Gamma Knife units secured behind electronically locked doors have a backup door alarm which operates during a fire alarm. The commenter noted that hospitals are increasingly adopting electronic locks for securing rooms and that the fire code requires electronic locks to be disabled during a fire alarm. The commenter noted that frequently the door alarm and motion detector are tied into the same system.

Response: The licensee must meet the requirements of the rule. Any additional alarms or other systems beyond those used to meet the requirements are at the discretion of the licensee.

Comment C91: One commenter noted that since a Gamma Knife treatment room has a single entrance that could be controlled by an assailant, one or more panic alarm buttons, unobtrusively placed, should be installed so that the staff could summon security without being noticed. The commenter also suggested requiring use of a portal radiation monitor tied into security at the exit.

Response: The use of duress/panic alarms could be used to enhance the licensee's response plans and a radiation monitor can be used to detect a situation where a source has been removed from a device. The licensee can determine which methods it will use to comply with the rule. Any additional alarms or other systems beyond those used to meet the requirements are at the discretion of the licensee.

Comment C92: One commenter stated that additional security measures addressing radioactive materials are not necessary in the refining or petrochemicals industry due to the location, lack of accessibility, source holder design, and currently applicable security requirements. The commenter noted that the sources are continually monitored by process control systems and there would be an immediate response, due to process safety concerns, if they were to go off-line. The commenter noted that most sources are contained within source holders bolted individually to a process column or equipment and the source holders are typically very large, heavy, cumbersome metal containers. The commenter noted that to remove the source holders requires tools, cranes, hoist or scaffold support because of their weight and position on the process equipment. The commenter also noted that the sources are not aggregated but are located within the various operating unit locations scattered over several acres.

Response: Part 37 only applies if the material is aggregated such that the total equals or exceeds the category 2 threshold. As with the orders, the licensee can take measures such that the provisions do not apply. For example, if a source holder is welded to the column and has a cage around it, the NRC has determined that this is sufficient and the sources would not need to be considered in aggregating the material. Additional information has been added to the implementation guidance to clarify what types of barriers would be sufficient.

Comment C93: One commenter noted that the type and configuration of irradiators would render the probability of their use in an act of terrorism as extremely unlikely. The commenter noted that they are stationary, weigh in excess of 1000 pounds, and are secured within segregated and separately locked facilities on a secure campus requiring separate authorized keycard access to both the buildings themselves and the irradiator rooms 365 days per year. The commenter recommended that the NRC exempt irradiators from 10 CFR part 37.

Response: The NRC disagrees that irradiators should be exempt from the requirements of 10 CFR part 37. The requirements are designed to control access both to the radioactive material and to the irradiator by controlling access to the security zone. The NRC has engaged the expertise of national laboratories that have shown that these devices may be vulnerable to theft, sabotage, or diversion under certain scenarios. For this reason, and the possibility that the necessary trained individual could be a malevolent insider, the NRC has determined that certain additional security measures are necessary in the current threat environment. Part 37 uses a layered, defense-in-depth approach to enhance the security of radioactive material in category 1 and category 2 quantities. No single measure can provide the required security for this material. Therefore, a licensee must implement all applicable 10 CFR part 37 requirements.

D. Transportation Security

Comment D1: In the proposed rule, the NRC specifically invited public comment on several aspects of license and address verification. Commenters were requested to provide information on: (1) Whether there should be a requirement for verification of the license for transfers of category 2 quantities of radioactive material or whether it would be acceptable to wait for the system being developed before requiring license verification for transfers of category 2 quantities of radioactive material; (2) how the address verification might work for shipments to temporary job sites and the ability of both licensees and the Agreement States to comply with such a requirement; (3) the frequency of the license verification, and (4) how the transferring licensee would know if a license has been modified since the last check and that the licensee is still authorized to receive the material. Seventeen commenters provided responses to the specific questions on this subject.

Of those that provided responses to the questions on license verification, most commenters indicated that the current system for license verification for category 2 quantities of radioactive material is acceptable until the license verification is developed and ready for implementation. A few commenters indicated that phone verification for category 2 would be acceptable before the new system is available; others indicated that the NRC should wait for the new system. One commenter suggested that verification not be required for shipments that result in a change of jurisdiction but not a change of licensee. Most commenters did not support a requirement for address verification for temporary jobsites, noting that in most cases the regulatory authority will not know the address for a temporary site and that in some cases there is no address. One State indicated that it did not allow shipments to temporary jobsites. On the issue of frequency of license verification (every transfer, annual, etc.), the response was mixed; some noted that annual verification was adequate, some noted that every transfer should be verified, some noted that every transfer would be ok once the new system is available, some suggested semiannual, and some felt that use of the National Source Tracking System was sufficient. One commenter noted that amendments and enforcement actions typically take a long time so the likelihood of a license being modified after a copy is obtained by the transferor is very small. The commenter indicated that there was no compelling reason to take extra measures to verify that the license has

not been modified since that last check. Most commenters noted the current practice was acceptable until the new license verification system is up and running. One commenter suggested obtaining a written statement from the receiving licensee RSO attesting to the current amendment number.

In addition to those that responded to the specific questions, 18 commenters provided comments on this topic. One commenter noted that it was unclear why additional work over and beyond the current requirements in § 30.41 is needed. Some commenters objected to the need to verify a licensee's validity prior to shipment as it creates a large burden on the licensee and the regulatory agency. At least one commenter felt that the current method of obtaining a copy of the receiving licensee's license via either fax or email was adequate to verify the validity of a licensee. Commenters felt that, for companies with which they do frequent business, verification was not necessary and that having a copy of the license on file or verification within the last year was adequate. Some commenters noted that verifying for every shipment would take time and personnel and increase the cost of doing business. One commenter indicated that they felt that it would take half a day to process 30 orders using the system which is 4 times the current time. Other commenters felt that that an annual check would not be acceptable and the verification should occur close to the shipping date. One commenter stated that a company should not be required to verify a same company license in another State prior to transfer between the same company but at different locations. Two commenters requested clarification on the need to report shipments within the same company but within different jurisdictions, such as temporary jobsites in another State.

One commenter suggested that the verification requirement be revised to allow for verification of the delivery address through the receiving licensee's RSO or another individual specifically identified on the license. The commenter pointed out that some licenses may list the primary address but not individual buildings and that the delivery (or dock) address may be different than the official building address that is listed on the license. Commenters were opposed to including a requirement to validate the address for transfers of category 2 quantities of radioactive material.

Commenters noted that it can be difficult to reach the regulator and once reached that it may take the individual some time to look up the license and verify the information. Commenters indicated that this could result in delays and/or stopped shipments. As an alternative, one commenter suggested that the regulatory agency could send a copy of an amended license to ensure up to date and valid copies are on file.

One commenter recommended removing reference to the License Verification System as it does not exist yet and another commenter noted that the system would unlikely be operational when the final rule is published. Several commenters expressed some concern over how well the license verification system will work; some asked for clarification on possible access to the system. One commenter recommended that the verification provision should not be implemented until the system is fully operational and demonstrated to be effective.

One commenter asked if the verification of license provisions applied to exports. One commenter asked if these requirements would replace the National Source Tracking System requirements.

One commenter noted that there is no need to document that a check has been done as it can be covered under a procedure that the licensee has in place for license checks and that adding additional documentation just adds time and effort without value. One commenter questioned what documentation was required for the transfer verification.

Response: One of the recommendations from the Independent Review Panel was that licenses be confirmed for all transfers of radioactive material in risk-significant quantities. The NRC agrees with the recommendation and believes that verification of the license before transfer is an important component that enhances the security of the material by validating the licensee's legitimacy. Use of the License Verification System is a key component to allow 100 percent validation of licenses before transfer of category 1 or category 2 quantities of radioactive material. While some commenters felt that a fax or email was adequate to verify the validity of a license, the NRC disagrees. An individual can alter or tamper with a license to change the possession limits or location of use, or even the person that received the license. Currently, many licensees obtain copies of the license and keep the copy on file. The problem with this method is that the license could be amended or terminated and the licensee would not know that the license was no longer valid. The License Verification System is being developed to prevent these scenarios from occurring. Licensees are required to use either the License Verification System or contact the regulatory agency (NRC or Agreement State) to verify that a license is valid before shipping category 1 or category 2 quantities of radioactive material to a domestic company. For category 1 shipments, the licensee must also verify that the shipping address is valid. Transfers within the same company in a different State do not need to be verified as the company knows what it is authorized to possess. The rule language has been clarified to make this clear. Verification is not required for imports and exports; the requirements of part 110 apply. The NRC agrees that the License Verification System (LVS) needs to be fully functional before this provision of the regulations is implemented. Although the NRC expects a timely startup of the LVS, this provision of 10 CFR part 37 permits a separate compliance date that can be changed if this startup is delayed.

The NRC does understand that it can be difficult to reach regulator personnel and that there may be times when the system is down. Therefore, the NRC has added a new provision that provides an alternative so that licensees can still ship. If the licensee cannot reach the regulator and the system is nonfunctional, the licensee will be able to use certification from the receiving licensee that the licensee is authorized to receive the requested radioactive material. The licensee must follow-up by the end of the next business day to confirm the license was valid.

The NRC has also changed the documentation requirement. The final rule only requires documentation if the licensee conducts the verification by contacting the license issuing authority (NRC or Agreement State). The documentation can simply be a note to file or a copy of an email response from the NRC or Agreement State. The license verification system will keep the record of any verification conducted using the system, therefore, the licensee is not required to keep separate documentation. Documentation is important from an inspection and enforcement aspect.

Comment D2: One commenter noted that the verification requirement appears to duplicate the transfer requirements under § 30.41. The commenter noted that licensees should be exempted from § 30.41 if they have category 1 or category 2 quantities and follow 10 CFR part 37. The commenter noted that this is an example of an area where industry and the NRC could constructively work together through

public meetings to find the most efficient and effective solution to address NRC's concern. One commenter noted that the proposed regulations should be consistent with existing NRC regulations related to radioactive materials, should not duplicate any existing requirements, and should not rely on the general statements of ''not withstanding the requirements of any other regulations in this chapter.''

Response: The verification requirements in § 37.71 are in place of the requirements in § 30.41(d). The language has been revised to make this clear. In addition, the NRC has added a provision to address emergency situations where the License Verification System is down and the licensee cannot reach the licensing authority.

Comment D3: One commenter objected to the preplanning and coordination requirements in § 37.75 stating that it would be impossible to implement for category 2 sources for facilities that make numerous shipments a day. The commenter noted that it would require a dedicated individual to constantly communicate with customers and carriers throughout the day for the 40–60 shipments and receipts that occur during the day. The commenter noted that currently the customer is told of the shipment date and method of shipment and that the preplanning system takes advantage of the already understood arrival times if using FedEx or similar. The commenter noted that the shipper can review the FedEx confirmed deliveries each day (one central location) which verifies receipt by the customer. The commenter noted that this has been working very effectively, so there is no reason to change to a much more burdensome method.

Response: It is not clear why the commenter believes that it will need to constantly communicate with customers and carriers throughout the day. The basic requirements are similar to the orders, with the exception of establishing a no-later-than arrival time. The licensee could easily establish the no-later-than arrival time as the close of the business day on the expected arrival date. If the licensee is already telling the customer the shipping information, the addition of one additional piece of information does not present a large burden and does not require the shipping licensee to conduct its business in a different manner than it currently does. The NRC has revised the language to clarify the coordination activities and has removed the requirement that specified methods of sharing information to provide licensees more flexibility. Information has been added to the implementation guidance.

Comment D4: One commenter stated that in § 37.75(a)(2) alternate requirements should be added for those States who will not be providing law enforcement escorts for the licensee to identify the intended LLEA contacts it will use to summon an armed response should there be an actual or attempted theft or diversion of the shipment.

Response: The NRC disagrees with the comment. Part 37 does not require the use of escorts for shipments of category 1 or category 2 quantities of radioactive material; therefore, an alternate requirement is not necessary.

Comment D5: Two commenters noted that in § 37.75(a)(2)(i) the term ''minimal delay'' is ambiguous and subject to interpretation. The commenter recommended that the term be clarified or deleted.

Response: The NRC agrees with the comment and has removed the requirement. While the purpose of the preplanning and coordination with the State is to ensure minimal delays, the language is not necessary in the rule itself.

Comment D6: Several commenters recommended removing the provisions for preplanning and coordination activities with the Governors of each State that the category 1 shipment will pass through. The commenters noted that the advanced notification provided to the State by the licensee provides sufficient time for the State to contact the licensee if a revision to the route or additional State imposed controls, such as escorts, are to be implemented. The commenters noted that Appendix A of the regulatory analysis indicates that there had been zero event notifications in the past 10 years regarding missing or lost material, suspicious activities, theft, or diversion of category 1 materials and questioned how additional coordination efforts that are not currently required by the orders can be justified. The commenters noted that the licensee would be unable to comply with the requirement to arrange for positional information sharing when required by the State because, as written, States would be authorized to dictate which position tracking provider a carrier must utilize, or the State could request that the carrier authorize the State to log into the carrier's tracking system. This would result in additional costs as there are licensing and data communication fees associated with tracking systems. One commenter asked if the NRC has determined whether carriers are willing to share their positional information real time. One commenter noted that this requirement could provide a mechanism for a State to block the transport of category 1 material through the State if the requesting state official cannot log onto the tracking system. Another commenter expressed concern over possible denial of a shipment through a State due to tracking system incompatibility. The commenter noted that denial of shipment could result in noncompliance with Federal interstate transportation laws. The commenter noted that the licensee and carrier are capable of determining safe havens along the route and that past experience has shown that requesting a State to identify safe havens has been fruitless. One commenter strongly agreed with the preplanning and coordination requirements as both necessary and desirable. The commenter urged the NRC to encourage States to coordinate with the LLEAs and affected Tribes, including route and schedule information in the shipment verification system, as it can help States monitor shipments and the no-later-than arrival times. One commenter noted that the coordination with the States is typically conducted by email and that there is no discussion unless the State initiates one in response to the licensee's notification. One commenter stated that there shouldn't be any additional requirements for category 1 quantities that might serve to dilute attention paid to highway route control quantities (HRCQ). One commenter suggested including the Agreement State program on the list for notification and preplanning coordination for category 1 shipments. The commenter noted that the Governor's designee is not always the Agreement State program director. One commenter noted that the need to coordinate with all States for transport will be very burdensome unless there is a tool to assist with implementation.

Response: The NRC has determined that the requirement for preplanning and coordination with each State for category 1 shipments is necessary, but has removed several of the proposed elements.

The NRC believes that it is necessary to coordinate with the State to determine whether the State plans to provide escorts. If the licensee doesn't find out about the need for an escort until after the advance notification is provided to the State, the licensee would likely need to adjust the schedule and reissue the advance notifications. Knowing upfront about the need for escorts is likely to reduce the overall burden on the licensee and allow the licensee to better plan the route for any shipment. The licensee is responsible for identifying safe havens along the route. The licensee would provide that

information to the State. If the licensee has difficulty identifying safe havens, it may want to discuss this with the NRC, State police, or other State contact. (*See also* response to Comment A11.)

The NRC agrees that the other elements of preplanning and coordination are not necessary. It was not the intent that the State be given direct access to the position monitoring system, only that the state be provided information about the shipment's location upon request. This provision is not included in the final rule. The NRC has only retained what it believes are the minimum requirements for the preplanning and coordination. The rule does not specify the method for conducting the preplanning and coordination. The licensee can conduct the preplanning and coordination by email.

The NRC will maintain the list of State contacts as it does for 10 CFR part 73 shipments. The list will be available on the NRC's Web site at *http://nrc-stp.ornl.gov/special/designee.pdf.* The list will also be published in the **Federal Register** on an annual basis, typically in early July.

Comment D7: Some commenters objected to the requirement to establish a no-later-than arrival time. One commenter pointed out that the shipping licensee has no control over when a common carrier delivers the material, noting that typically they know the day but not an exact hour. The commenter felt that the requirement would result in many unnecessary reports or an exaggeration of the time in order to avoid making reports and noted that licensees are responsible enough not to need a regulation that will burden them and ultimately be subverted. Another commenter felt that the rule would be extremely costly and time consuming to implement and impractical. The commenter stated that the NRC should place the requirement on the carrier and not the licensee, as the licensee has no control. Another commenter suggested waiting until the end of the day, which was previously agreed to, and send a report (NRC 748) into NSTS and hope that it gets put into the system, maybe receiving confirmation that the reports were received. Two commenters recommended allowing licensees to use the NSTS as method to fulfill the notification requirement in § 37.75(b) and (c). One commenter supported the concept and suggested timeframes. One commenter noted that a loss of material is an immediate notification and that the rule as proposed places the licensee in a burdensome position of devoting additional time, effort, and concern over movement of material that is not completely in their control. The commenter did agree that notification between the shipper and consignee is important but felt no need for further restrictions or regulations in this area. Another commenter noted that the shipper currently sends an email notification that has a receiving document attached to the message noting when the shipment was received. The commenters believe that licensees already effectively track the movement of sources without the need to impose additional regulation. One commenter noted that category 1 shipments are often held up in States for inspection. Commenters noted that common carrier delivery guarantees are not accurate to within 4 hours. Commenters noted that the 2- and 4-hour timeframes would result in numerous modifications to the time or ultra conservative estimates. Several commenters suggested 24 hours as the timeframe. One commenter noted that licensees routinely monitor the status of shipments and notify the carrier and regulatory agency when the shipment does not arrive within a reasonable timeframe. The commenter stated that the regulations should specify what is required and not how to achieve it. One commenter noted that the time of a shipment will not be known for material that is transported by common carrier as shippers like FedEx simply verify that a shipment will arrive by a certain date, and often the only notice that a shipment will be late is that it doesn't arrive by the end of the business day. One commenter requested clarification that the no-later-than arrival time applies only to domestic transfers, either within the definition or in the guidance. One commenter noted that § 37.75(b) requires licensees to email or fax arrival times for shipments of category 2 material and that licensees must be made aware that the email must be encrypted and faxes be made to an awaiting, known entity as was noted in Regulatory Issue Summary 2005–31.

Response: The NRC continues to believe that the establishment of a no-later-than arrival time is beneficial. The NRC notes that the orders currently require the licensee to coordinate the expected arrival time of the shipment and to initiate an investigation if the shipment has not arrived by the expected arrival time. The provision for the no-later-than arrival time actually provides the licensee with more flexibility. The no-later-than arrival time allows for traffic delays due to weather and other circumstances before an investigation is initiated. The no-later-than arrival time for category 1 shipments has been removed as the licensee is required to maintain continuous communication capability. The no-later-than arrival time provision only applies to domestic shipments. There is no requirement that email be encrypted and faxes be made to an awaiting, known entity.

Comment D8: One commenter stated that § 37.75(c) is a redundant requirement as licensees are already required to input data into the NSTS when shipping or receiving radioactive material. The commenter noted that licensees are already required to initiate an investigation if a shipment does not arrive and that there is no reason to require a licensee to notify the shipper when the shipment occurs as it is scheduled. The commenter noted that this would require a tremendous amount of resources and is unnecessary as a licensee is already required to notify the shipper if the shipment does not arrive. One commenter requested clarification on whether § 37.75(c) applied to notify international shippers of receipt within 4 hours. One commenter noted that the transferee licensee should notify the NRC (and the License Verification System) and the host State when a shipment arrives. The commenter indicated that the notification should reasonably occur within 2 hours after arrival instead of the 4 hours proposed in the rule. Another commenter objected to the need to confirm a shipment with the shipper and noted that it was redundant to current requirements for the NSTS. A commenter noted that if a notification must be made when a shipment does not arrive that it doesn't make sense to also require that a notification be made when and if it does arrive and therefore it just adds burden without benefit. One commenter recommended that the licensee should notify the NRC (and the License Verification System) as well as the States affected when a shipment is revised or cancelled. The commenter noted that the change should be reported by the carrier company after communication/coordination with the driver. One commenter objected to the requirement for the receiving licensee to notify the shipping licensee within 4 hours of a package arrival and recommended that the requirement be removed from the rule. The commenter indicated that this would result in an undue cost and would require licensees to have personnel on evenings, weekends, and holidays to receive/send the information. One commenter asked why using NSTS wasn't sufficient.

Response: The requirement in § 37.75(c) to notify that a shipment has

been received and the requirement to report to NSTS are not redundant. The reporting to NSTS is a report to a system and does not notify the shipping licensee that a source has been received. The shipping licensee would need to access the system to see if the status of the source has changed in order to determine if a shipment has been received. The reporting to NSTS is by the close of the next business day which means information on the receipt of the shipment might not be available for several days and this would be too long for a shipment to go missing without starting an investigation. Additionally, not all shipments are reported to NSTS. When shipments don't arrive on time, the shipping licensee needs to start an investigation to determine if the material is missing or just delayed in shipment. The requirement to confirm shipment is not new as it is a current requirement from the orders. The notification provisions do not apply to international shipments.

Comment D9: One commenter noted an inconsistency in the timeframes for the receiving licensee to notify the shipping licensee no later than 4 hours after the package arrives but that the shipping licensee is to begin an investigation within 2 hours of a category 1 shipment not arriving by the no-later-than arrival time.

Response: The NRC has removed the no-later-than arrival requirements for shipments of category 1 quantities of radioactive material because they are not needed with the communication and monitoring requirements associated with these shipments. The provision for no-later-than arrival time remains for category 2 shipments. The arrival time and the no-later-than arrival time are not the same times. The arrival time is the time the shipment actually arrives at the facility. The no-later-than arrival time is the time established that when a shipment has not arrived and an investigation will be started to determine the whereabouts of the shipment.

Comment D10: Two commenters pointed out an editorial error in § 37.75(d), noting that the reference to § 37.75(a)(1) should be § 37.75(b).

Response: The NRC agrees with the comment and has made the correction.

Comment D11: One commenter noted that it may not be possible to provide the information for an advance notification before the shipment. The commenter stated that the information is not available to most licensees because carriers are not willing and may not be able to provide the detailed information to licensees. The commenter noted that for an import, a licensee may not have this information until the shipment is in progress, or even when it is received. The commenter noted that if it is assumed that this requirement is only applicable from the point of customs clearance, then it may be practicable. The commenter indicated that the regulation should specifically state that it is applicable to the portion of the movement of shipments after customs clearance. One commenter asked if NRC has coordinated with DOT to determine if the advance notification is practicable. One commenter noted that the activity levels are not available with much degree of accuracy as the activity is often not measured until the shipment arrives. One commenter noted that the shipper may not know when a shipment will commence, cross State lines, and arrive. The commenter also noted that the shipper may not know of schedule changes ahead of time.

Response: The NRC understands that all of the information may not be available at the time of the initial advance notification. Section 37.77(b) specifically states that the licensee must provide the required information if available at the time of the notification. In addition, § 37.77(c) provides for revised notifications for information that was not available at the time of the initial notification and for instances where information changes. The commenter is correct that the provisions only apply to the domestic portion of the transport for both imports and exports. The requirements would begin at the point of customs clearance for imports and end at the border for exports. Section 37.73(d) and (e) notes that the provisions only apply to the domestic portion of the shipment. Both sections have been revised to address exports.

Although the NRC coordinates with DOT on a number of safety and security matters of mutual interest, licensees have implemented advance notification requirements for many years, and the practicability of these notifications is no longer in serious question.

Comment D12: Two commenters recommended that the advanced notifications to the Governor be made through the NRC's Operations Center. The commenters noted that the licensee could simply provide the advanced notification to the NRC's Operations Center with a list of States affected and the NRC's Operations Center would then transmit the advanced notification to the affected States. The commenters noted that this would reduce the record retention and notification burden on the licensee and would ensure consistency in how the States receive notifications.

Response: The NRC disagrees with the comment. It is the licensee's responsibility to notify the affected States. The need for the NRC's Operations Center to notify affected States could interfere with its primary responsibility to be available for response to events. Additionally, for those shipments that are made by an Agreement State licensee, the NRC would not be notified as the notification would go to the Agreement State. The Agreement State will need to provide the information to the NRC so that the NRC can share the information with its Federal partners.

Comment D13: Two commenters recommended including an email address and fax number for the NRC point of contact receiving the notification in § 37.77(a)(1). The commenters noted that the email address and fax numbers should be readily available as most notifications are made by email or fax.

Response: The NRC agrees with the comment and has included the secure fax number and email address to submit the notifications to the NRC.

Comment D14: Two commenters recommended removing the option in § 37.77(a)(2) to mail in notifications or require that notifications not submitted by fax or email be sent via certified mail or delivery service. The commenters noted that 7 days prior to the shipment date may not be sufficient time to allow a notification transmitted through the regular mail to reach the intended recipient.

Response: The NRC disagrees with the comment. The 7 days prior notice requirement is consistent with the similar provision for advance notifications for spent fuel shipments. Transmittal of the SGI–M information must meet the requirements of § 73.23. The licensee always has the option of sending the notification earlier than required. The NRC has revised § 37.77(a) to clarify the procedures for submitting the notifications.

Comment D15: Two commenters recommended increasing the notification requirement in § 37.77(a)(3) from 4 days to 7 days. The commenters noted that the additional time would provide States enough time to review and evaluate the details regarding the shipment and would preclude the need to conduct the required preplanning and coordination. The commenters noted that this advance notification process has been in place and proven effective for the past 6 years. One commenter recommended that ''other means'' in § 37.77(a)(3) be defined or clarified. The commenter assumed it meant by email or fax.

Response: The NRC disagrees with the comment. The NRC believes that 4 days provide sufficient time for the States to review and evaluate, particularly since the licensee is required to conduct preplanning and coordination with the States in addition to the advance notifications. The timeframe is also consistent with the similar provision for advance notifications for spent fuel shipments. No State that commented on the rule indicated that additional time was necessary. Other means could include fax or email, or delivery by messenger. Additional information has been added to the implementation guidance.

Comment D16: Two commenters indicated that it was unclear what information the point of contact, requested in § 37.77(b)(7) for the advance notifications, should be able to provide. The commenter noted that ''current shipping information'' could imply that the point of contact should be a person accompanying the shipment, or did it mean someone who has information regarding the details of the notification.

Response: The point of contact would be someone that has information regarding the details of the notification. It is not intended to be a person accompanying the shipment. Additional information has been added to the implementation guidance.

Comment D17: One commenter noted that the NRC should provide for advance notification to Tribes for shipments that cross their reservation. The commenter noted that this rule should be consistent with the rule that the NRC promulgates for Tribal notifications.

Response: The NRC may consider providing advance notification of these materials to Tribes in the future but does not currently plan to include the provision.

Comment D18: Three commenters suggested changing the phrase ''movement control center'' to ''communication control center'' in § 37.79 to maintain consistency with the orders.

Response: The NRC disagrees with the comment. Although the orders called the centers communication control centers, these centers are typically called movement control centers. The terms refer to the same function. The NRC is retaining the term movement control center to be consistent with the term in 10 CFR part 73 as the centers serve the same function.

Comment D19: One commenter noted that in the definition of ''movement control center'' various functions are combined and that there is no value in requiring that they all be accomplished by one entity as the functions may be accomplished by separate departments or personnel.

Response: The movement control center definition does not require that all of the functions be carried out by the same department or personnel. It does require an operations center or base from which all of the functions are handled. The primary purpose of the movement control center is to have staff available that can immediately respond to an emergency and coordinate the required response.

Comment D20: One commenter requested clarification in § 37.79(c)(1)(ii) on the use of authentication and duress codes. The commenter noted that it wasn't clear if there were two codes or if there needed to be a strategy for the ''use'' and ''authentication'' of duress codes.

Response: The NRC has revised the rule language to clarify that there are two types of codes.

Comment D21: One commenter noted that redundant communications systems are required but it was not clear if redundant position location or tracking systems are necessary.

Response: The rule does not contain a requirement for a redundant position location or tracking system.

Comment D22: One commenter noted that although a licensee can make arrangements to ensure that personnel are trained and can audit the carrier for compliance, it cannot ensure that personnel are trained as required. One commenter objected to the requirement for licensees providing training to entities beyond its control such as railroad personnel. The commenter noted that the carriers already have training and certification requirements under DOT. Two commenters recommended allowing the licensee to provide current copies of normal and contingency procedures in lieu of training as required by § 37.79(c)(2). The commenter noted that it is not feasible to provide ''appropriate training'' to a group of individuals that the licensee has no control over.

Response: The NRC agrees with the comment. The NRC agrees that it is acceptable to provide copies of the normal and contingency procedures in lieu of a formal training program. If this mechanism is used, the licensee should have a signoff sheet associated with the procedure that the individual would sign indicating that he or she has read and understands the procedure. The NRC also agrees that the licensee would be unable to dictate that railroad personnel undergo training and follow the licensee's procedures. Railroads have their own processes and procedures in place and would be required to follow them. The NRC has removed the requirement for railroad shipments.

Comment D23: One commenter stated that the regulation must make it clear that the requirements in § 37.79 are only applicable from the point of customs clearance.

Response: Section 37.73(d) and (e) makes it clear that the provisions only apply during the domestic portion of the shipment. For imports, the provisions begin at the point of customs clearance.

Comment D24: One commenter noted that § 37.79 requires licensees to use companies who use package tracking systems (for category 2) and that it should be clarified that the package itself should be accounted for and not simply the paperwork.

Response: The NRC believes that the regulations are clear that it is the package that is being tracked and not the paperwork. No change to the regulations is needed.

Comment D25: One commenter objected to the requirement to start an investigation if a package does not arrive within 2 to 4 hours of its designated arrival time. The commenter noted that weather, traffic, etc. could affect delivery times and that starting an investigation because a package did not arrive on time due to poor weather, etc is a waste of time and resources with no foreseeable gains for security. The commenter noted that the timeframe should allow some time for investigation and suggested an 8- and 24-hour timeframes.

Response: The NRC agrees in part with the comment. The NRC has clarified the text in § 37.79(d) to remove reference to lost or unaccounted for material. The requirement to establish a no-later-than-arrival time for shipment of category 1 quantities has been removed as the licensee is required to maintain constant communication capability. The NRC has increased the timeframe for the no-later-than arrival time for category 2 shipments to 6 hours.

Comment D26: One commenter stated that when shipping radioactive material meeting the requirements of HRCQ and RAMQC the requirements should include having two forms of communications available at all times for reporting incidents and requesting assistance.

Response: The NRC agrees and included a requirement for redundant communication capability for category 1 shipments (RAMQC) in the proposed rule. The final rule in § 37.79(a)(1)(ii) requires licensees to ''Ensure that

redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.'' Redundant communications are required to mitigate an interruption, caused by either natural events, such as storms, or deliberate actions, such as signal jamming, that may cause communications to be lost on the primary communication device. One or more additional communication devices must be available to operate independently of the primary device, thereby minimizing the possibility that whatever disabled the primary device will impact the redundant devices. For category 2 shipments, the NRC is not requiring a redundant means of communication.

The requirements for HRCQ shipments, other than the category 1 material, are beyond the scope of this rulemaking.

Comment D27: One commenter felt that the rule should be revised to require the licensee to provide some level of armed security during transport of HRCQ.

Response: The NRC disagrees and feels that the physical protection measures in place are adequate without requiring the use of armed security personnel. The licensees that ship category 1 quantities of radioactive material by road would be required to have sufficient protective measures which include: A movement control center that maintains periodic position information from a location remote from the activity of the transport vehicle or trailer and monitors shipments 24 hours a day, 7 days a week; redundant communications that would allow the transport to contact an escort vehicle; and the ability to communicate an emergency immediately to appropriate law enforcement agencies that would provide an armed response. Since the appropriate States are to be notified in advance of the shipment, the State may decide to have armed escorts accompany the shipment within the State's borders.

The requirements for HRCQ shipments, other than the category 1 material, are beyond the scope of this rulemaking.

Comment D28: One commenter suggested adding an exemption to § 37.79 for shipments transported as Exclusive Use, in accordance with 49 CFR 173.441. The commenter noted that package tracking systems are necessary when a carrier handles multiple consignments on single vehicles and when packages traverse through delivery hubs. The commenter noted that an exclusive use shipment removes the risk of lost or misdirected packages and would provide the same level of control as a package tracking system. The commenter noted that adding the exemption would give the licensee the ability to transport their own category 1 materials.

Response: The NRC disagrees with the comment and does not believe that an exemption is appropriate for shipments transported as Exclusive Use. The shipment should still have the same security measures applied even if the shipment is in a dedicated truck. While it might remove the risk of a misdirected package, it does not remove the possibility that the material could be stolen during transport. The licensee is allowed to transport its own category 1 or category 2 material under the rule.

Comment D29: One commenter was disappointed that the proposed rule did not contain the requirement for GPS tracking for trucks carrying category 2 quantities of radioactive material that was requested in PRM–71–13 or, alternatively, for the rule to give Agreement States the flexibility to be more stringent than NRC. The commenter was disappointed that the NRC did not request comments on the issues raised in the petition nor provided any further discussion or explanation for not including the two recommendations in the proposed rule. The commenter noted that NMED data shows that since the letter was sent, another truck carrying radiography sources was stolen, and the commenter further noted that it only takes one to become the terrorist event. The commenter noted that GPS tracking is very inexpensive and an easy way to help with rapid recovery should preventative measures fail and that GPS tracking for category 2 sources should be required.

Response: The NRC reevaluated the need for requiring GPS tracking for trucks carrying category 2 quantities of material. The NRC continues to disagree with the comment. Tracking a truck can be misleading as either the source or the device containing the source can be removed and the GPS would provide no benefit. There is no easy method of placing the GPS tracking mechanism on either the source or device. While GPS could help with locating the truck, the source/device may not still be on the truck. For devices in or on a vehicle, the licensee is supposed to maintain control and have constant surveillance of the material or use a method to disable the vehicle. The NRC believes that these measures are adequate. As for the compatibility of the provisions, the provisions need to remain compatibility B because there are significant transboundary implications.

Comment D30: One commenter noted that the shipping requirements are somewhat demanding with the authorized shippers having added responsibilities. The commenter assumed that the Commission will communicate with the shipping agencies accordingly. The commenter noted that the addition of GPS capabilities combined with vehicle/trailer alarms with remote features will be an added expense. Another commenter asked how to find the approved carriers.

Response: The NRC is not sure what the commenter meant by authorized shipper, but assumes that it refers to the licensee that is shipping the material. The NRC is also uncertain what the commenter meant by shipping agencies, but assumes that the term refers to common carriers. Common carriers do not have any responsibilities under part 37 as the NRC does not regulate the carrier. It is each licensee's responsibility to make sure that its shipments are compliant with the regulations. The NRC believes that the requirements in subpart D are necessary for the safe transport of category 1 and category 2 quantities of radioactive material. The regulations do not require the licensee to use GPS or vehicle/trailer alarms during shipment of the material. Alarms may be necessary, however, if the material is stored in the vehicle or trailer while the vehicle is unoccupied. The NRC does not approve the carriers.

Comment D31: One commenter stated that § 73.35 is not clear on what to include/exclude from the calculation for ''net weight.'' The commenter indicated that if the ''net weight'' is intended to include only the weight of the nuclear or radioactive material contained in the irradiated fuel, then this should be clearly stated. The commenter noted that calculation by ''exclusion'' may lead to wide variation in interpretation.

Response: The rule addresses the irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, and that has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 m (3.3 ft) from any accessible surface without intervening shielding.

Comment D32: One commenter proposed an exemption for the aggregation of packages that individually each contain less than a category 2 quantity of material and were in a package with an external volume

exceeding 1 cubic foot and with a mass exceeding 100 pounds. The commenter noted that these parameters would present a practical, individual barrier to theft. The commenter also suggested, as an alternative, the addition of a specific activity threshold to the category 2 table, and materials not exceeding the specified concentration values (sum of fractions could be applied to packages containing multiple radionuclides of interest) would be exempted from the requirements.

Response: The NRC disagrees that the parameters described would present a practical barrier to theft. The requirements do not allow an individual licensee to aggregate less-than-category-2-quantity packages of material to exceed category 2 limits for an individual shipment unless the shipment complies with 10 CFR part 37 requirements. If two or more packages, each containing less than a category 2 quantity, in aggregate reach or exceed a category 2 quantity in a shipment from one NRC licensee, the licensee would be required to meet applicable subpart D requirements before shipping.

The NRC did consider specific activity and grants an exemption as stated in § 37.11(c), which states that licensees that possess radioactive waste that contains category 1 or category 2 quantities of radioactive material are exempt from the requirements of subpart B, C, and D of 10 CFR part 37, unless the radioactive waste contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 lbs).

Comment D33: One commenter noted that category 1 rail shipments should be by dedicated trains.

Response: The NRC disagrees with the comment. There is no security or health and safety basis for requiring dedicated trains for rail shipments of category 1 quantities of radioactive material.

Comment D34: The proposed rule contained a provision that would require the licensee to have an NRC-approved monitoring plan to ensure that no unauthorized access to the shipment takes place while the shipment is in a railroad classification yard. The NRC specifically sought comment on the feasibility of this requirement. Commenters were requested to provide information on: (1) Whether surveillance of the shipment could be accomplished while in the classification yard; (2) whether the classification yard would allow an individual to accompany a shipment while the shipment is held in the classification yard; and (3) what precautions might be necessary from a personal safety standpoint. Five commenters provided responses to the specific questions on this subject.

Of the commenters that addressed the questions on the monitoring plans for use in railroad classification yards, only one commenter gave an answer other than unknown. The commenter noted that, due to insurance and liability concerns, it was highly unlikely that the classification yard would allow an individual to accompany a shipment. The commenter noted that DOT regulations were sufficient for personal safety from a radiological perspective.

In addition to those that addressed the specific questions, two commenters provided comment in this area. One commenter indicated that additional monitoring while the shipment is in a railroad classification yard is an impractical and unenforceable requirement. The commenter noted that the systems that are currently in place are sufficient. One commenter stated that remote monitoring of the package and not the railcar is necessary in a classification yard.

Response: The NRC has decided not to include the provision for an NRC-approved monitoring plan for the time that a shipment is located in a railroad classification yard. The NRC agrees that DOT regulations are sufficient.

Comment D35: One commenter asked if the requirement for continuous and active monitoring by licensees applies only to shipments carried by the licensee. The commenter noted that real-time information is not available to the licensee when a carrier is used.

Response: The continuous and active monitoring of category 1 shipments, whether by the licensee or by a carrier, is the responsibility of the licensee. It is also the licensee's responsibility to ensure that its carrier has the capabilities for continuous and active monitoring. Any time a shipment is enroute, the licensee must be knowledgeable of its whereabouts, which can be verified by a phone call to the movement control center or other means of communication. This provides licensees with flexibility to design continuous and active monitoring systems that meet their unique circumstances. A licensee may use a carrier or third-party communications center in lieu of establishing one itself.

Comment D36: One commenter asked if FedEx's tracking system is considered to be proven and reliable as they are the primary carrier of radioactive material.

Response: The NRC does not prescribe a particular system for tracking shipments. The NRC regulations describe the performance characteristics for a method used for category 2 shipments and does not endorse any particular company. The regulations require licensees to use carriers that have an established package tracking system which is a documented, proven, and reliable system routinely used to transport objects of value. This gives licensees the flexibility to use tracking systems that work within their organization. The package tracking system must allow the shipper or transporter to identify when and where the package was last located and when it should arrive at the next point of control. The NRC does not object to the use of Federal Express, as long as they continue to meet these requirements.

Comment D37: One commenter asked how the security provision must be implemented when using a freight forwarder.

Response: Transportation security requirements will still apply to shipments using a freight forwarder. The NRC expects licensees to ensure that their shipments are received by the recipient in a timely manner and that any suspicious, attempted, or actual acts against a shipment would be quickly detected, assessed, and immediately reported to law enforcement authorities.

Comment D38: One commenter questioned who would be responsible for complying with the security requirements when a carrier aggregates the material during transport or storage incidental to transport. The commenter noted that it would be logical for the responsibility to be with the carrier.

Response: Licensees are not responsible for packages that are aggregated by the carrier as long as the individual licensee does not exceed category 2 thresholds. The licensees are not responsible if the carrier picks up radioactive material from multiple locations that, in the aggregate, meet or exceed the category 2 threshold, since the licensees have no knowledge of what the total quantity of material might be in the shipment. The NRC does not regulate the carrier.

Comment D39: One commenter suggested using a table to denote applicability for the different types of shipments in § 37.73 as the paragraph format was confusing.

Response: The NRC has added a table to denote applicability for different types of shipments to the implementation guidance.

Comment D40: One commenter indicated that synchronization of the NRC and DOT requirements should be addressed. The commenter noted that the rulemaking does not discuss the connection between the NRC and DOT requirements on security and physical protection. The commenter noted that

the rulemaking appears to regulate carriers even if only for security purposes. The commenter felt that this situation could violate the separation of responsibilities that the two organizations have and will, at a minimum, create confusion among carriers. One commenter felt that the rule should more closely align with the DOT requirements for HRCQ shipments for routes used. One commenter asked if there has been coordination between DOT and NRC regarding security during transport, particularly in light of HM232F.

Response: The NRC shares responsibility for the safe and secure transport of radioactive material with DOT and DHS. The NRC has a Memorandum of Understanding (MOU) with DOT for safety and is currently in the process of developing an MOU with DOE, DHS, and DOT on transportation security to ensure that the agencies work together. The Commission believes that it is necessary and appropriate to require licensees to implement the proposed requirements, believes that the issuance of security requirements for the transport of the material is not a significant regulatory impediment, and believes that licensees and carriers can successfully implement the requirements of both Title 49 and Title 10.

Comment D41: One commenter noted that the NRC's intent for shipments of category 2 quantities of radioactive material is not clear for licensees that are consignee, shipper, and consignor, as is the case for the movement of most industrial radiography sources used in the field. The commenter noted that this common situation should be addressed for clarity either by inclusion or exclusion in the rule.

Response: The situation where a licensee is transporting its own material is covered by § 37.79(a)(2).

Comment D42: One commenter stated that the requirements placed on licensees to coordinate with and to notify the LLEA for transport of category I and category 2 quantities cannot be achieved by the licensee alone, and thus seem unreasonable.

Response: The NRC disagrees with the comment. The rule does not contain any provisions to coordinate with the LLEA for transport of material. Licensees are required to notify the LLEA if a shipment of category 1 materials is lost or missing. The NRC continues to believe that this is an appropriate notification and sees nothing unreasonable in the requirement.

Comment D43: One commenter (a State) noted that a number of shippers are routing around States that charge fees for transportation of HRCQ shipments of radioactive material and that this results in longer transportation times and greater risk for shipment incidents because of the additional transit time and miles traveled. The commenter noted that because shipments of radioactive material are being routed around the fee States, they are now traveling through areas where there is little training and coordination of response to radioactive material incidents increasing the risk and vulnerability. The commenter suggested that language be added to require the shortest, most direct, approved route for all HRCQ shipments and to prohibit avoidance of States with transportation fees. The commenter further suggested that licensees and shippers of HRCQ materials be required to meet and preplan shipment routes with States on an annual basis to ensure the States are ready to respond to incidents as needed.

Response: Routing of HRCQ material lies within the jurisdiction of DOT's regulations and is beyond the scope of this rulemaking. For category 1 shipments, the licensee is required to preplan and coordinate with the States along the shipment route.

Comment D44: One commenter questioned why spent fuel was not addressed in the rule.

Response: The rule does address transportation security of small quantities (less than 100 grams) of irradiated fuel. Transportation security of spent fuel is being addressed in a separate rulemaking. The proposed rule was published for public comment on October 13, 2010; 75 FR 62695. Most of the licensees impacted by 10 CFR part 37 do not possess spent fuel and large quantities of special nuclear material. Security of special nuclear material and spent fuel security is addressed in 10 CFR part 73 and in orders that were issued to specific licensees possessing the material. Security for independent spent fuel storage installations will be addressed in a future rulemaking.

Comment D45: One commenter noted that the link for Agreement State contacts did not appear to work.

Response: The NRC has tested the link for Agreement State contacts provided in the response to Q4 and it does take you to the Web page on the Agreement States. From that location, you can access the State transportation contacts. Part 37 contacts will not be added until just before the rule is implemented.

Comment D46: One commenter stated that it is imperative that the requirements for the transshipment of radioactive material be identical to those for domestic shipments, and urged the NRC to work with other Federal agencies to harmonize the regulations so that licensees and their regulators at the Federal and State level follow consistent rules for all shipments. The commenter suggested general licensing of carriers as one way to resolve this issue. One commenter asked why transuranic shipments were not addressed in 10 CFR part 37 and whether these shipments fell under other security program requirements. Another commenter asked what security requirements covered transshipments and noted that it does not make sense to impose additional security on licensees, if transshipments are not covered. Another commenter recommended consistent regulations for transshipments, air shipments, and water shipments regardless of the Federal authority and that the standards for transshipments must be consistent with domestic shipments. The commenter urged the NRC to provide leadership in promoting consistency, perhaps via interagency agreement. The commenter also recommended that the license verification system (licensees and shipments by and among licensees) incorporate all RAMQC shipments, regardless of the Federal authority under which they are made and that the relevant information in the License Verification System be appropriately shared with the State and local authorities involved in enforcement.

Response: The NRC does not have any authority over transshipments and does not regulate common carriers. However, the NRC has provided copies of transportation security orders to companies that transship category 1 quantities of radioactive materials. These companies have agreed to voluntarily implement the security requirements for transshipments. DHS has the overall lead for harmonizing transshipment security, and the NRC has and will continue to work with other Federal agencies on the security requirements for transshipments. The License Verification System will be available to Agreement State personnel.

Comment D47: One commenter recommended that NRC work with the States and law enforcement groups to determine effective ways to support transport of category 1 and category 2 quantities of radioactive material.

Response: The NRC did coordinate with the States. The Agreement States were involved in both the development of the orders and development of 10 CFR part 37. Law enforcement is not involved in the routine transport of category 1 and category 2 quantities of radioactive material. If a shipment is

lost or stolen, law enforcement would be contacted to assist.

E. Miscellaneous

Comment E1: One commenter wanted a clear, concise statement that the requirements in 10 CFR part 37 supersede the Increased Control Orders. The commenter suggested adding a second paragraph to § 37.1.

Response: The NRC disagrees with the comment. A provision in the rule is not necessary to note that the rule supersedes the orders. The orders will be formally rescinded (withdrawn) on the effective date of the final rule in each jurisdiction (Agreement State or NRC).

Comment E2: One commenter noted that the rule does not contain any punitive provisions regarding situations where employees or outside persons compromise safety and/or security. The commenter noted that there are no provisions that can be cited in the event that a licensee or an unlicensed person attempts to or gains unauthorized access, breaches security systems, or otherwise compromises the security of radioactive material.

Response: The NRC does not agree with the commenter's statement. The proposed rule does contain punitive provisions for situations where employees or outside persons compromise safety and/or security. Specifically, § 37.109 provides for criminal penalties. Section 37.109 of subpart G states that section 223 of the AEA provides criminal sanctions for violations of any regulation issued under 161b., 161i., or 161o., of the AEA. As stated in § 37.109, all relevant portions of this final rule have been issued pursuant to one or more of sections 161b., 161i., or 161o. of the AEA. Further, there are other applicable statutory provisions that provide punitive sanctions for trespass and sabotage of nuclear facilities or fuel that could be imposed on employees or outside persons who compromise safety and/or security.

Comment E3: One commenter noted that the proposed rule fails to provide descriptions in most sections to outline how the regulations are applicable to a master materials licensee or a Federal agency. The commenter felt that this lack of descriptions follows the pattern of the previously issued increased controls and will likely result in confusion during NRC compliance inspections at master materials licensee facilities.

Response: A master material licensee and a Federal agency are still a licensee and are treated the same as any other licensee. While a master material licensee can issue permits within its organization for the use of material, the permittees must still meet the requirements of the license and the regulations. The NRC is not aware of any implementation or inspection issues that have resulted from a licensee being a master material licensee or a Federal agency.

Comment E4: Some States expressed concern that the proposed rule would result in a potential increase in workload for the Agreement State programs and that many States, particularly smaller States, may have trouble accommodating the additional workload. Some of the Agreement States also noted that the radiation control programs within the States do not have the necessary expertise to handle what are essentially ''law enforcement'' activities, nor will they likely be able to hire additional staff to undertake these responsibilities. They also noted that many of the proposed changes would impose duties that are beyond traditional radiation control agency functions, and it is likely that they would need to seek amendments to enabling legislation to undertake the activities. One commenter stated that since the regulatory activities formerly carried out under the NRC's Common Defense and Security authority are being shifted to the Agreement States because the rule is being issued under the NRC's Health and Safety authority, the NRC should provide the funds necessary to pay the direct costs incurred by the Agreement State governments in implementing the regulation. One commenter (a State) indicated that NRC must determine if funding will be provided to the States to increase staffing levels to implement the rule or if other health and safety programs should be cut.

Response: The NRC acknowledges that the rule will result in a potential increase in workload for the Agreement State programs. However, this is not unique to 10 CFR part 37. Any time the NRC issues a rule that is a matter of compatibility for the Agreement States, there will be an increased workload for the States. The State must expend some effort to adopt the regulations and to include the provisions in its inspection programs. These costs are addressed in the regulatory analysis. The Agreement States will now need to conduct the security inspections for those facilities in their State that were issued orders under common defense and security and budget for those inspections instead of being reimbursed by the NRC for conducting the inspections. The NRC disagrees that the rule contains provisions that are essentially ''law enforcement'' activities. The NRC assumes that the commenters are referring to the regulatory agency approval of the reviewing official. The NRC does not believe that this is a law enforcement function, but in any case, regulatory agency approval of the reviewing official has been removed and is not in the final rule. As for the NRC paying the direct costs of increased staffing levels, the NRC is not authorized to pay the salary costs for Agreement State staff. The NRC can and will continue to pay for the necessary training for Agreement State staff.

Comment E5: One commenter agreed with the proposed provisions to remove the concept of sensitive information as used in the orders and address information security in relevant sections of the proposed rule. One commenter noted that placing all of the security requirements in one chapter significantly enhanced their clarity. One commenter supported the NRC decision to forgo conventional significant figure conventions and list the actual curie activity equivalents to three figures as many licensees use curies in their activities instead of Becquerels. One commenter supported the general objective of the rulemaking. Two commenters supported the approach to terminate the orders coincident with the effective date of the rule in each jurisdiction to avoid potential confusion and noncompliance. One commenter expressed general support for the overall rulemaking and suggested enhancements in the transportation security area. Several commenters supported placing the security requirements in a rule instead of in orders as it allows for public input and shows the American population steps that are being taken to ensure their security.

Response: No response necessary. Suggested enhancements were considered as separate comments.

Comment E6: One commenter suggested that the NRC develop programs and information packets to all involved (regulatory personnel, shipping agencies, law enforcement agencies, Governors) so that everyone can be on the same page.

Response: The NRC does have information on its Web site. Information on radioactive material security can be found at *http://www.nrc.gov/security/byproduct.html* and information on radioactive material transportation at *http://www.nrc.gov/materials/transportation.html.* These sites provide links to a variety of source documents and specific NRC security enhancement activities, including those on a Web page on current NRC radioactive

material security orders and requirements (*http://www.nrc.gov/security/byproduct/orders.html*) and a Web page on material transportation regulations, guidance, and communications (*http://www.nrc.gov/materials/transportation/regs-guides-comm.html*). The NRC also routinely participates in interagency efforts, such as the Task Force on Radiation Source Protection and Security, where subjects of common interest are discussed.

Comment E7: One commenter (a State agency that possesses radioactive material subject to the rule) stated that the State would not provide the additional funding necessary to implement the requirements in 10 CFR part 37.

Response: Licensees are responsible for implementing and complying with relevant regulations. A licensee may always request an exemption from specific aspects of the requirements for its regulator to consider.

Comment E8: One commenter stated that the phrase 'Background Check' was used inconsistently and seemed to mean different things in different places. The commenter recommended reviewing the rule text for consistent use of all terminology.

Response: The term ''background check'' is only used in the rule in the context of the Bureau of Alcohol, Tobacco, Firearms, and Explosives background checks. The term is used consistently in the rule. The NRC tries to be consistent within the document, and any inconsistencies identified have been corrected.

Comment E9: Three commenters addressed plain language in the rule. One commenter suggested using ''you'' instead of ''licensee,'' pointed out some long sentences, and noted some use of passive instead of active voice. One commenter suggested rewriting the rule to address these concerns. Another commenter noted that a single standard, clearly spelled out in living room language, would better meet the need of all licensees. One commenter noted that the rule did not meet the goal or the intent of the President's directive.

Response: The NRC has considered the editorial changes and made changes as appropriate.

Comment E10: One commenter noted that 10 CFR part 37 does nothing to improve the security of radioactive materials that could be introduced into the United States from foreign origins.

Response: The NRC's regulations only apply once the radioactive material is in the U.S. The NRC does not have authority over material in foreign countries.

Comment E11: One commenter noted that while the rule will help protect the United States from terrorists, we should be thinking of the environmental consequences.

Response: The NRC prepared an environmental assessment to support the rulemaking.

Comment E12: One commenter suggested that the concept of what category 1 and category 2 quantities are should be introduced earlier in the summary and background sections to ensure that the distinction between radioactive materials and category 1 and 2 quantities of radioactive material is clear and that each term is used appropriately.

Response: The NRC disagrees with the comment. The summary notes that the rule establishes security requirements for category 1 and category 2 quantities of radioactive material and that the category 1 and category 2 thresholds are based on the IAEA Code of Conduct. The NRC believes that the Statements of Consideration adequately describe the material and are clear on what radioactive material is covered by the rule.

Comment E13: One commenter noted that since few changes were made by NRC as a result of Agreement States comments on the predecisional draft of the proposed regulations, the NRC should make available to the Director of the Office of Management and Budget (OMB) any written communications submitted to the agency by State officials, including State comments on the pre-decisional draft of 10 CFR part 37.

Response: The NRC made a number of changes in response to Agreement State comments on the predecisional draft of the proposed rule. The NRC did not make changes to the major issues on the reviewing official, background investigation, and temporary jobsites, but specifically invited comment on these issues in the proposed rule. Major differences with the States were identified to the Commission as is common practice. The NRC does not provide any comments to OMB, other than comments on the information collection associated with the rule.

Comment E14: One commenter stated that the title of the rule should also include a reference to the protection of information (SGI–M and SUNSI). The commenter also stated that references to the protection of information need to be made more consistent throughout the rule as most sections and subsections only require implementation if individuals have access to category 1 and category 2 quantities of radioactive material. The commenter stated that those having access to safeguarded or sensitive information also need to be included in the majority of the sections in the rule, and the NRC should consider the inclusion of 10 CFR part 73 among the list of provisions of parts affecting licensees in § 37.1.

Response: The NRC disagrees with the comment. Part 73 contains the physical protection requirements for special nuclear material as well as requirements for protection of SGI. Reference to the SGI provisions in 10 CFR part 73 were added to parts 30, 35, etc., as part of the SGI rule that was published in the **Federal Register** on October 24, 2008; 73 FR 63546. References to 10 CFR part 73 are included at appropriate locations in 10 CFR part 37. Section 37.1 contains the purpose of 10 CFR part 37 and does not include a reference to any affected provisions of other NRC rules.

Comment E15: One commenter stated that the rule (and orders) moves the emphasis for security away from engineered controls toward administrative controls and that this goes against decades of NRC safety policy and generally-accepted safety philosophy.

Response: The NRC disagrees with the comment. Part 37 contains a mix of engineered controls and administrative controls.

Comment E16: One Agreement State expressed disappointment in what was viewed to be the overly prescriptive content of the proposed rule and the resurgence of issues that were previously discussed and agreed upon as resolved in the orders. One Agreement State indicated that the operational and practical understanding of the orders, together with the knowledge of the effectiveness of the orders that the collective Agreement States have gained during this time, should be taken into consideration by the NRC. Other Agreement States noted disappointment and concern that many concepts that were discussed at length during the development of the orders and rejected by the orders working groups/steering committees now appear in this proposed rule. They further noted that they disagree with the new provisions and do not believe that the added benefit warrants the significant resource burden that would be incurred. One Agreement State felt that the rule contained too many prescriptive items and was not adequately performance based. One commenter noted that the knowledge and understanding that the Agreement States have obtained during implementation of the orders should be helpful to the NRC in improving the rulemaking.

Response: The rulemaking process is a more deliberative process than what is used to develop an order. The 10 CFR part 37 working group also had additional information to consider that included information from lessons learned, implementation issues, inspection issues, recommendations from other reviews, as well as the comments on the preliminary rule language. In some cases the 10 CFR part 37 working group and steering committee came to a different resolution than that for the orders. Agreement State experience was utilized. There were Agreement State representatives on the 10 CFR part 37 working group and on the steering committee that brought their experience to the discussions. In some areas where agreement could not be reached, the NRC sought public comment on the issue to better inform the final decision.

Comment E17: One commenter suggested that the NRC reconsider its decision to use the same software developers for the verification system as were used for the National Source Tracking System based on the multiple continuing problems with the system.

Response: The comment is beyond the scope of the rulemaking.

Comment E18: Two commenters suggested that NRC conduct one or more additional public workshops prior to submitting the draft final rule and implementation guidance to the Commission for approval. The commenters noted that the NRC could explain at the meeting how it addressed and resolved the more significant or controversial topics addressed by the public comments. The commenters noted that the September 2008 workshop that NRC conducted on the Security and Continued Use of Cesium-137 Chloride sources could serve as an excellent model for such workshops. One commenter suggested holding public meetings to discuss the regulatory analysis document and receive insights and perspectives on its content.

Response: The NRC does not plan to hold any public meetings or workshops on the 10 CFR part 37 final rule. The public was provided opportunity to provide input on the rule and regulatory analysis during the public comment period. The NRC considered the comments received and made changes to the rule and supporting documents as appropriate.

Comment E19: Two commenters stated that continued stakeholder input and involvement in the security area are essential and requested that the NRC allow substantive opportunities to engage industry over the next 4 years on the myriad of issues that the Congressionally mandated Radiation Source Protection and Security Task Force is addressing as all stakeholders continue to work collectively toward mutual safety and security objectives.

Response: Continued stakeholder involvement in the security area is beyond the scope of this rulemaking.

Comment E20: Two commenters noted that the NRC does not routinely share the technical basis for rulemakings with stakeholders and recommended that this become routine practice. The commenters noted that providing the technical basis may have proven helpful for this rule.

Response: Stakeholder involvement in regulatory basis development is beyond the scope of this rulemaking. The decision to solicit stakeholder input during the development of the regulatory (technical) basis for a potential rule is decided on a case-by-case basis. The NRC does obtain stakeholder input more routinely than it did a few years ago. The NRC did obtain stakeholder input during the development of the technical basis for the transportation security portion of this rulemaking.

Comment E21: One commenter stated that the NRC should conduct inspections to ensure that licensees are following the requirements and that the focus on compliance verified by inspection should receive greater emphasis instead of imposing additional administrative burdens based on authorized use. Another commenter noted that the NRC must ensure compliance through periodic inspections as is currently done. Several commenters recommended that the NRC perform compliance audit based reviews similar to what was done after the orders were implemented. The commenter noted that the reviews were done with a level of discretion and without citation as long as the licensee made significant efforts to address the orders. One commenter requested that the inspection frequency be modified to more closely coincide with the risk.

Response: The NRC will conduct inspections to ensure that licensees are complying with 10 CFR part 37 requirements. The inspections will be conducted as part of the normal inspection program. The comment on inspection frequency is beyond the scope of the rulemaking as the inspection frequency is not set by the rule.

Comment E22: One commenter noted that a new licensee must have the physical protection measures in place prior to a license being issued and that this would be part of any prelicensing inspection. The commenter noted that the agency should ensure implementation before issuing a license.

Response: The NRC agrees that licensees should have the majority of the provisions in place before the license is issued; some measures could not be implemented until material is actually at the facility. The NRC conducts prelicensing inspections before granting a license to anyone that would be authorized to possess category 1 or category 2 quantities of radioactive material.

Comment E23: One commenter noted that certain materials licensees would remain subject to the SGI requirements. The commenter recommended that conforming changes to 10 CFR part 73 be included as part of the regulation development under 10 CFR part 37, to ensure efficiency, clarity, and help ensure compliance. The commenter noted that SECY–09–0181 was silent on the timing of the future rulemaking to revise 10 CFR part 73 to remove the SGI handling requirements for licensees subject to 10 CFR part 37.

Response: The changes to 10 CFR part 73 to revise the SGI requirements are beyond the scope of this rulemaking. The timing of any potential changes to 10 CFR part 73 is unknown at this time.

Comment E24: One commenter noted that the rule could result in institutions choosing to store materials, including waste, in separate locations. The commenter noted that this could cause logistical problems to keep track of the material and could inadvertently increase the risk to the security of these materials.

Response: A licensee may choose to store radioactive materials, in any form, in separate locations to avoid being subject to the proposed security requirements. Such action would not conflict with the intent of the proposed rule, which is to limit access to an aggregated category 2 quantity of radioactive material listed in Table 1. Aggregated, for purposes of this rule, means accessible by breach of a single physical barrier.

Comment E25: One commenter made several comments related to a change in the annual occupational radiation dose to a lower range and how it would impact the licensee.

Response: These comments are beyond the scope of the rulemaking as the proposed rule did not include any changes to the annual occupational radiation dose. These comments appeared to be filed under the wrong docket and were provided to the NRC working group that is looking at possible changes to 10 CFR part 20.

IV. Discussion of Final Amendments by Section

Section 20.2201(c) Reports of Theft or Loss of Licensed Material

This section is revised to include a reference to the reporting requirements in 10 CFR part 37 so that a licensee is not required to file duplicate reports for the same event.

Section 30.6 Communications

This section is revised to include a reference to the new 10 CFR part 37.

Section 30.13 Carriers

This section is revised to include 10 CFR part 37 in the list of regulations that exempt common carriers.

Section 30.33 General Requirements for Issuance of Specific Licenses

Paragraph (a)(4) is revised to include a reference to the new 10 CFR part 37.

Section 32.1 Purpose and Scope

10 CFR part 37 is added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 33.1 Purpose and Scope

10 CFR part 37 is added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 34.1 Purpose and Scope

10 CFR part 37 is added to the list of 10 CFR parts that apply to applications and licensees subject to this part.

Section 35.1 Purpose and Scope

10 CFR part 37 is added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 36.1 Purpose and Scope

10 CFR part 37 is added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 37.1 Purpose

This section establishes the purpose for the new 10 CFR part 37.

Section 37.3 Scope

This section establishes the scope of the proposed new 10 CFR part 37. These regulations apply to any person licensed by the NRC, who possesses, uses, or transports an aggregated category 1 or category 2 quantity of radioactive material. Paragraph (a) establishes the applicability for subpart B and C. Paragraph (b) establishes the applicability for subpart D.

Section 37.5 Definitions

Definitions of the following terms that are included in this part are identical to the definition of the term in other parts of this chapter: Act, Agreement State, Becquerel, Byproduct material, Carrier, Commission, Curie, Government agency, License, Lost or missing material, Person, State, and United States. In addition, definitions for the following terms are included in this Part: Approved individuals, Access control, Aggregated, Background investigation, Category 1 quantity of radioactive material, Category 2 quantity of radioactive material, Diversion, Escorted access, Fingerprint Orders, License issuing authority, Local law enforcement agency, Mobile device, Movement control center, No-later-than arrival time, Reviewing official, Sabotage, Security zone, Telemetric position monitoring system, Trustworthiness and reliability, and Unescorted access.

Section 37.7 Communications

This section specifies where all communications and reports concerning 10 CFR part 37 are to be sent.

Section 37.9 Interpretations

This section establishes that no interpretations of the meaning of the regulations in 10 CFR part 37 by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission, unless specifically authorized by the Commission in writing.

Section 37.11 Specific Exemptions

This section establishes that the Commission may grant exemptions from the requirements of the regulations in 10 CFR part 37 that it determines are authorized by law and that will not endanger life or property or the common defense and security, and are otherwise in the public interest. Paragraph (b) exempts an NRC licensee's activities from 10 CFR part 37 to the extent that the activities are covered under the physical protection requirements of 10 CFR part 73. Paragraph (c) provides security measures for certain radioactive waste that contains category 1 or category 2 quantities of radioactive waste.

Section 37.13 Information Collection Requirements: OMB Approval

Paragraph (a) specifies that the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Paragraph (b) lists those sections in 10 CFR part 37 that have approved information collection requirements.

Section 37.21 Personnel Access Authorization Requirements for Category 1 or Category 2 Quantities of Radioactive Material

Paragraph (a) of this section establishes which licensees need to comply with the requirements of subpart B of 10 CFR part 37.

Paragraph (b) establishes the general performance objective to ensure that the individuals subject to the access authorization program are trustworthy and reliable.

Paragraph (c)(1) establishes the individuals that are subject to the access authorization program. Paragraph (c)(2) allows licensees to not subject those individuals listed in § 37.29(a) to the investigation elements of the access authorization program. Paragraph (c)(3) requires that licensees only approve those individuals whose job duties permit unescorted access to category 1 or category 2 quantities of radioactive material.

Section 37.23 Access Authorization Program Requirements

This section establishes the general requirements for the access authorization program, such as the use of reviewing officials, informed consent, personal history disclosure, determination basis, procedures, the right to correct and complete information, and record retention.

Section 37.25 Background Investigations

This section establishes the elements of the background investigation that are necessary before granting an individual unescorted access to category 1 or category 2 quantities of radioactive material. The scope of the initial investigation is the past 7 years. This section also addresses reinvestigation and grandfathering of individuals.

Section 37.27 Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material

Paragraph (a) establishes the general requirements for criminal history records checks of individuals to be granted unescorted access to category 1 or category 2 quantities of radioactive material.

Paragraph (b) prohibits a licensee from basing a final determination to deny an individual unescorted access authorization solely on the basis of certain information received from the FBI.

Paragraph (c) establishes the procedure for submitting fingerprint records to the NRC.

Section 37.29 Relief From Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials

This section provides relief from the fingerprinting and criminal history records check requirements and the background investigation requirements of this subpart for certain categories of individuals.

Section 37.31 Protection of Information

This section outlines the requirements for the protection and release to authorized personnel of personal information collected by a licensee during a background investigation.

Section 37.33 Access Authorization Program Review

This section outlines the requirements for an annual access authorization program review to confirm compliance with the requirements of subpart B of 10 CFR part 37 and for comprehensive corrective actions to be taken in response to any nonconformance identified by the review.

Section 37.41 Security Program

Paragraph (a) establishes the applicability of the security program. Paragraph (a)(1) requires licensees that possess an aggregated quantity of category 1 or category 2 quantities of radioactive material to establish, implement, and maintain a security program. Paragraph (a)(2) requires those licensees that are newly subject to subpart C, upon application for modification of its license or an applicant submitting a new application, to implement the requirements before taking possession of an aggregated category 1 or category 2 quantity of radioactive material. Paragraph (a)(3) requires any licensee that has not previously implemented either the orders or subpart C to notify the NRC at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

Paragraph (b) establishes the general performance objective of the security program.

Paragraph (c) establishes the program features that must be addressed in the security program.

Section 37.43 General Security Program Requirements

Paragraph (a)(1) requires licensees to develop a written security plan that addresses how the licensee will implement the security program requirements. Paragraph (a)(2) requires the security plan to be reviewed and approved by the individual with overall responsibility for the security program. Paragraph (a)(3) allows a licensee to revise its security plan to ensure effective implementation of the plan. Paragraph (a)(4) requires the licensee to retain a copy of the current security plan until the license is terminated and any security plan revisions for 3 years.

Paragraph (b)(1) requires licensees to develop and maintain written procedures for implementation of the security plan. Paragraph (b)(2) requires the procedures to be approved by the individual with overall responsibility for the security program. Paragraph (b)(3) requires the licensee to retain a copy of the procedures for 3 years after the procedure is no longer needed or upon termination of the license and any revisions for 3 years.

Paragraph (c) requires licensees to conduct training and annual refresher training on the security plan. Licensees are required to maintain training records for 3 years from the date of the training.

Paragraph (d) requires licensees to protect the security plan, implementing procedures, and the list of individuals that have been approved for unescorted access from unauthorized disclosure. Licensees are required to develop, maintain and implement written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures. Only individuals with a need-to-know and that have been determined to be trustworthy and reliable should have access to the protected information. The information protection procedures are retained for 3 years after the document is no longer needed.

Section 37.45 LLEA Coordination

Paragraph (a) requires that a licensee attempt to coordinate with an LLEA and specifies the types of information to be shared with the LLEA.

Paragraph (b) requires the licensee to notify the NRC if the LLEA isn't willing to participate in coordination activities or does not respond to the coordination request.

Paragraph (c) requires the licensee to maintain records of its coordination activities with any LLEA.

Section 37.47 Security Zones

Paragraph (a) requires licensees to establish security zones for the use of category 1 or category 2 quantities of radioactive material.

Paragraph (b) requires the establishment of temporary security zones, as necessary, to meet transitory or intermittent business activities.

Paragraph (c) requires that security zones use physical barriers or direct control of the security zone to allow unescorted access only to approved individuals.

Paragraph (d) requires licensees to provide an approved individual to maintain constant surveillance of sources in temporary security zones or in a security zone in which a physical barrier or intrusion detection system has been disabled to allow maintenance, source receipt, preparation for shipment, source installation, or removal or exchange of category 1 quantities of radioactive material.

Paragraph (e) requires individuals not approved for unescorted access to be escorted by an approved individual when in a security zone.

Section 37.49 Monitoring, Detection, and Assessment

Paragraph (a) requires the licensee to establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into the security zones.

Paragraph (b) requires the licensee to assess without delay each actual or attempted unauthorized entry into the security zone.

Paragraph (c)(1) requires the licensee to maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems.

Paragraph (c)(2) requires the licensee to provide alternative capabilities for personnel communication and data transmission and processing.

Paragraph (d) requires the licensee to respond without delay to any actual or attempted unauthorized access to the security zone.

Section 37.51 Maintenance and Testing

This section requires licensees to implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition, are capable of performing their intended function when needed, and are inspected and tested for operability and performance. The testing and maintenance are to be conducted at the frequency recommended by the manufacturer or annually if there is no manufacturer's recommended frequency. Licensees are

required to maintain the maintenance and testing records for 3 years.

Section 37.53 Requirements for Mobile Devices

This section requires licensees that possess mobile devices containing category 1 or category 2 quantities of radioactive materials to have two independent physical controls to secure the radioactive material from unauthorized removal and to use a method to disable the vehicle or trailer when the device is on a vehicle or trailer, unless the site prohibits the use of a disabling mechanism due to health and safety concerns.

Section 37.55 Security Program Review

This section requires licensees to conduct an annual review of the security program. The licensee is required to document the results of the review and any findings and keep the records for 3 years.

Section 37.57 Reporting of Events

Paragraph (a) requires licensees to immediately notify the LLEA of any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and to then notify the NRC.

Paragraph (b) requires licensees to assess any suspicious activity related to the theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and to notify the LLEA as appropriate and then notify the NRC.

Paragraph (c) requires licensees to submit a written report to the NRC within 30 days of any report of actual or attempted theft, sabotage, or diversion of radioactive material.

Section 37.71 Additional Requirements for Transfer of Category 1 and Category 2 Quantities of Radioactive Material

Paragraphs (a) and (b) establish new requirements for licensees transferring category 1 and category 2 quantities of radioactive material. The licensee is required to verify the validity of the license by using the license verification system or contacting the license issuing authority.

Paragraph (c) provides an emergency method for when the licensee can't reach the license issuing authority and the license verification system is nonfunctional.

Paragraph (d) requires documentation to be maintained for 3 years.

Section 37.73 Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Transit

This section establishes which requirements apply to licensees shipping category 1 or category 2 quantities of radioactive material and what requirements apply during the domestic portion of a shipment that is imported from another country or exported to another country. This section also allows the receiving licensee to arrange for the in-transit physical protection of a shipment instead of the shipping licensee as long as the agreement is in writing.

Section 37.75 Preplanning and Coordination of Shipment of Category 1 or Category 2 Quantities of Radioactive Material

This section establishes the preplanning and coordination necessary for a shipment of category 1 or category 2 quantities of radioactive material.

Section 37.77 Advance Notification of Shipment of Category 1 Quantities of Radioactive Material

This section establishes the requirements for advance notification to the NRC and the governor of a State, or the governor's designee, of the shipment of category 1 quantities of radioactive material that will pass through or across the State.

Section 37.79 Requirements for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Shipment

This section establishes the physical protection requirements for shipments of category 1 and category 2 quantities of radioactive material. Paragraph (a)(1) establishes the requirements for shipping a category 1 quantity of radioactive material by road. Paragraph (a)(2) establishes the requirements for a licensee that transports category 2 quantities of radioactive material by road. Paragraph (a)(3) establishes the requirements for a licensee that uses a carrier for shipping category 2 quantities of radioactive material.

Paragraph (b)(1) establishes the requirements for shipping category 1 quantities of radioactive material by rail. Paragraph (b)(2) establishes the security requirements for shipping category 2 quantities of radioactive material by rail.

Paragraph (c) requires the shipping licensee to immediately conduct an investigation of any shipment of category 2 quantities of radioactive material that is lost or unaccounted for after the designated no-later-than arrival time. It also requires the licensee to conduct an investigation once it is determined that a category 1 shipment is lost or missing.

Section 37.81 Reporting of Events

This section establishes requirements for the shipping licensee to make notifications upon the discovery that a shipment is lost or missing and upon discovery of any actual or attempted theft or diversion of a shipment, or suspicious activities related to the theft or diversion of a shipment of either a category 1 or category 2 quantity of radioactive material. This section also establishes requirements for notification upon recovery of a lost or missing shipment. Written follow-up reports are required for notifications of actual theft or attempted theft or diversion of a shipment.

Section 37.101 Form of Records

This section establishes the requirements for the storage and protection of records required by this part.

Section 37.103 Record Retention

This section establishes the Commission's termination of the license as the end point of the retention period for any record where a specific retention period is not specified.

Section 37.105 Inspections

Paragraph (a) requires licensees to allow the Commission the opportunity to inspect the materials and facilities subject to 10 CFR part 37.

Paragraph (b) requires the licensee to make available for inspection any records subject to 10 CFR part 37.

Section 37.107 Violations

Paragraph (a) of this section establishes that the Commission may obtain an injunction or other court order to prevent a violation of the AEA, Title II of the Energy Reorganization Act of 1974, as amended; or a regulation or order issued under those Acts.

Paragraph (b) of this section establishes the violations for which the Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the AEA.

Section 37.109 Criminal Penalties

This section establishes the sections in 10 CFR part 37 that are issued under one or more of Sections 161b, 161i, or 161o and are therefore subject to criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate the regulation.

Appendix A to 10 CFR Part 37—Category 1 and Category 2 Radioactive Materials

Table 1 of this appendix establishes the radionuclides and associated thresholds for category 1 and category 2 quantities of radioactive material. The appendix also provides the methodology for calculating the sum of fractions for evaluating combinations of multiple radionuclides.

Section 39.1 Purpose and Scope

10 CFR part 37 is added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review

Paragraph (c)(3) is revised to include 10 CFR part 37.

Section 71.97 Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

Paragraph (b) is revised to delete the reference to shipments of irradiated reactor fuel in quantities less than those subject to the advance notification requirements of 10 CFR 73.37(f). Section 73.35 provides that such irradiated reactor fuel shipments be subject to the same requirements that apply to shipments of category 1 radioactive material, including the advance notification requirements.

Section 73.35 Requirements for Physical Protection of Irradiated Reactor Fuel (100 Grams or Less) in Transit

A new section is added to 10 CFR part 73 to address the physical protection requirements for shipments of irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 m (3.3 ft) from any accessible surface without intervening shielding. The material is subject to the same transportation security requirements as category 1 quantities of radioactive material.

V. Criminal Penalties

For the purpose of Section 223 of the AEA, the Commission is amending 10 CFR parts 20, 30, 32, 33, 34, 35, 36, 39, 51, 71, and 73 and adding new 10 CFR part 37 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC analyzed the final rule in accordance with the procedure established within part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

The NRC program elements (including regulations) are placed into four compatibility categories (see the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A elements are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B elements are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C elements are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D elements are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) elements are program elements that are not required for compatibility, but are identified as having a particular health and safety role (*i.e.,* adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S Category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC elements are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the AEA or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that have been created or revised and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' A bracket around a category means that the section may have been adopted elsewhere, and it is not necessary to adopt it again.

The Agreement States have 3 years from the publication of the final rule in the **Federal Register** to adopt compatible regulations.

COMPATIBILITY TABLE FOR FINAL RULE

Section	Change	Subject	Compatibility	
			Existing	New
Part 20				
20.2201(c)	Amend	Reports of theft or loss of licensed material	D	D
Part 30				
30.6	Amend	Communications	D	D

COMPATIBILITY TABLE FOR FINAL RULE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
30.13	Amend	Carriers	B	B
30.33(a)(4)	Amend	General requirements for issuance of specific licenses	D	D
Part 32				
32.1(b)	Amend	Purpose and scope	D	D
Part 33				
33.1	Amend	Purpose and scope	D	D
Part 34				
34.1	Amend	Purpose and scope	D	D
Part 35				
35.1	Amend	Purpose and scope	D	D
Part 36				
36.1	Amend	Purpose and scope	D	D
Part 37				
37.1	New	Purpose		D
37.3	New	Scope		D
37.5	New	Definition Access control		C
37.5	New	Definition Act		D
37.5	New	Definition Aggregated		C
37.5	New	Definition Agreement State		[B]
37.5	New	Definition Approved individual		B
37.5	New	Definition Background Investigation		C
37.5	New	Definition Becquerel		[A]
37.5	New	Definition Byproduct Material		[H&S]
37.5	New	Definition Carrier		[B]
37.5	New	Definition Category 1 quantities of radioactive material		B
37.5	New	Definition Category 2 quantities of radioactive material		B
37.5	New	Definition Commission		D
37.5	New	Definition Curie		[A]
37.5	New	Definition Diversion		C
37.5	New	Definition Escorted access		B
37.5	New	Definition Fingerprint Orders		C
37.5	New	Definition Government agency		D
37.5	New	Definition License		D
37.5	New	Definition License issuing agency		D
37.5	New	Definition Local law enforcement agency		C
37.5	New	Definition Lost or missing material		[B]
37.5	New	Definition Mobile device		B
37.5	New	Definition Movement control center		B
37.5	New	Definition No-later-than arrival time		B
37.5	New	Definition Person		[C]
37.5	New	Definition Reviewing official		C
37.5	New	Definition Sabotage		C
37.5	New	Safe haven		B
37.5	New	Definition Security zone		C
37.5	New	Definition State		D
37.5	New	Definition Telemetric position monitoring system		B
37.5	New	Definition Trustworthiness and reliability		B
37.5	New	Definition Unescorted access		B
37.5	New	Definition United States		D
37.7	New	Communications		D
37.9	New	Interpretations		D
37.11(a)	New	Specific exemptions		D
37.11(b)	New	Specific exemptions		D
37.11(c)	New	Specific exemptions		B
37.13	New	Information collection requirements: OMB approval		D
37.21(a)	New	General		C
37.21(b)	New	General performance objective		B
37.21(c)	New	Applicability		B
37.23(a)	New	Granting unescorted access authorization		B
37.23(b)(1), (2), (4), (5)	New	Reviewing officials		B
37.23(b)(3)	New	Reviewing officials		C

COMPATIBILITY TABLE FOR FINAL RULE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
37.23(c)	New	Informed consent		B
37.23(d)	New	Personal history disclosure		B
37.23(e)	New	Determination basis		B
37.23(f)	New	Procedures		C
37.23(g)	New	Right to correct and complete information		B
37.23(h)	New	Records		C
37.25(a)	New	Initial investigation		B
37.25(b)	New	Grandfathering		C
37.25(c)	New	Reinvestigations		B
37.27(a)	New	General performance objective and requirements		B
37.27(b)	New	Prohibitions		B
37.27(c)	New	Procedures for processing fingerprint checks		B
37.29(a), (b)	New	Relief from fingerprinting, identification, and criminal history records checks and other elements of a background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.		B
37.31(a)–(d)	New	Protection of information		B
37.31(e)	New	Protection of information		C
37.33(a), (b), (c)	New	Access authorization program review		C
37.41(a)	New	Applicability		B
37.41(b)	New	General performance objective		B
37.41(c)	New	Program features		C
37.43(a)	New	Security plan		B
37.43(b)	New	Implementing procedures		C
37.43(c)(1)–(c)(3)	New	Training		B
37.43(c)(4)	New	Training		C
37.43(d)(1)–(d)(8)	New	Protection of Information		C
37.43(d)(9)	New	Protection of Information		NRC
37.45(a), (b), (d)	New	LLEA coordination		B
37.45(c)	New	LLEA coordination (records)		C
37.47(a)–(e)	New	Security zones		B
37.49(a)	New	Monitoring and detection		B
37.49(b)	New	Assessment		B
37.49(c)	New	Personnel communications and data transmission		B
37.49(d)	New	Response		B
37.51	New	Maintenance and testing		C
37.53	New	Requirements for mobile devices		B
37.55(a), (b), (c)	New	Security program review		C
37.57(a)	New	Reporting of events		C
37.57(b)	New	Reporting of events		C
37.71	New	Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.		B
37.71(a), (b) (c)	New	Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.		B
37.71(d)	New	Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.		C
37.73(a), (b), (d), (e)	New	Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.		D
37.73(c)	New	Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.		B
37.75(a)–(d)	New	Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.		B
37.75(e)	New	Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.		C
37.77	New	Advance notification for shipments of category 1 quantities of radioactive material.		B
37.77(a)	New	Procedures for submitting advance notification		B
37.77(b)	New	Information to be furnished in advance notification of shipment		B
37.77(c)	New	Revision notice		B
37.77(d)	New	Cancellation notice		B
37.77(e)	New	Records		C
37.77(f)	New	Protection of information		NRC
37.79(a)	New	Shipments by road		B
37.79(b)	New	Shipments by rail		B
37.79(c)	New	Investigations		B
37.81(a)	New	Reporting of events		B
37.81(b)	New	Reporting of events		B
37.81(c)	New	Reporting of events		B
37.81(d)	New	Reporting of events		B
37.81(e)	New	Reporting of events		B

COMPATIBILITY TABLE FOR FINAL RULE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
37.81(f)	New	Reporting of events		B
37.81(g)	New	Reporting of events		C
37.81(h)	New	Reporting of events		C
37.101	New	Form of records		C
37.103	New	Record retention		C
37.105	New	Inspections		D
37.107	New	Violations		D
37.109	New	Criminal penalties		D
Appendix A	New	Category 1 and 2 thresholds		B
Part 39				
39.1	Amend	Purpose and scope	D	D
Part 51				
51.22(c)(3)	Amend	Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.	NRC	NRC
Part 71				
71.97(b)	Amend	Advance notification of shipment of irradiated reactor fuel and nuclear waste.	B	B
Part 73				
73.35	New	Requirements for physical protection of irradiated reactor fuel (100 grams or less) in transit.		NRC

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is establishing security requirements for the use of category 1 and category 2 quantities of radioactive materials. The NRC is not aware of any voluntary consensus standards that address the subject matter of this final rule. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

IX. Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required for this rulemaking. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact.

The implementation of the final rule's security requirements would not result in significant changes to the licensee's facilities, nor would such implementation result in any significant increase in effluents released to the environment. Similarly, the implementation of the final rule's security requirements would not affect occupational exposure requirements. No major construction or other earth-disturbing activities on the part of affected licensees are anticipated in connection with licensees' implementation of the final rule's requirements. The Commission has determined that the implementation of this final rule is procedural and administrative in nature.

The determination of this environmental assessment is that there will be no significant impact to the public from this action.

This conclusion was published in the environmental assessment that was posted to the NRC's rulemaking Web site: *http://www.regulations.gov* after publication of the proposed rule. No comments were received on the content of the environmental assessment.

X. Paperwork Reduction Act Statement

This final rule contains new information collection requirements in 10 CFR part 37 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0214. The changes to 10 CFR parts 20, 30, 32, 33, 34, 35, 36, 39, 51, 71, and 73 do not contain new or amended information collection requirements. Existing requirements were approved by the OMB, approval numbers 3150–0014, 3150–0017, 3150–0001, 3150–0015, 3150–0007, 3150–0010, 3150–0158, 3150–0130, 3150–0021, 3150–0008, and 3150–0002.

The burden to the public for the information collections in 10 CFR part

37 is estimated to average1.7 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Chad Whiteman, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0214), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The analysis is available for inspection in the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852. The analysis may also be viewed and downloaded electronically via the Federal erulemaking portal at *http://www.regulations.gov* by searching for Docket ID NRC–2008–0120.

XII. Regulatory Flexibility Certification

The NRC has prepared a regulatory analysis of the impact of this final rule on small entities. The final rule will affect about 300 NRC licensees and an additional 1,100 Agreement State licensees. Affected licensees include laboratories, reactors, universities, colleges, medical clinics, hospitals, irradiators, manufacturers and distributors, well loggers, and radiographers, some of which may qualify as small business entities as defined by 10 CFR 2.810. Based on the regulatory analysis conducted for this action, the costs of the rule for affected licensees are estimated to be between $358 million and $488 million (7-percent and 3-percent discount rate over 20 years, respectively) total. The average licensee will have a one-time cost of approximately $23,375 and an annual cost of approximately $21,736 to fully implement the final rule. The NRC believes that the selected alternative reflected in the final rule is the least burdensome, most flexible alternative that accomplishes the NRC's regulatory objective. The Regulatory Flexibility Analysis is included as an Appendix to this final rule.

XIII. Backfit Analysis

The NRC has determined that the backfit rule, which is found in the regulations at 10 CFR 50.109, 70.76, 72.62, 76.76, and in 10 CFR part 52, does not apply to this final rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR chapter I. Therefore, a backfit analysis is not required.

XIV. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 33

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalties, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 37

Byproduct material, Criminal penalties, Export, Hazardous materials transportation, Import, Licensed material, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

Authority: Atomic Energy Act secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 223. 234 1701 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2273, 2282, 2297f), Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. No. 109–58, 119 Stat. 549 (2005) (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 2. In § 20.2201, paragraph (c) is revised to read as follows:

§ 20.2201 Reports of theft or loss of licensed material.

* * * * *

(c) A duplicate report is not required under paragraph (b) of this section if the licensee is also required to submit a report pursuant to §§ 30.55(c), 37.57, 37.81, 40.64(c), 50.72, 50.73, 70.52, 73.27(b), 73.67(e)(3)(vii), 73.67(g)(3)(iii), 73.71, or 150.19(c) of this chapter.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 3. The authority citation for part 30 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 4. In § 30.6, the introductory text of paragraph (a) is revised to read as follows:

§ 30.6 Communications.

(a) Unless otherwise specified or covered under the regional licensing program as provided in paragraph (b) of this section, any communication or report concerning the regulations in parts 30 through 37 and 39 of this chapter and any application filed under these regulations may be submitted to the Commission as follows:

* * * * *

■ 5. Section 30.13 is revised to read as follows:

§ 30.13 Carriers.

Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in this part and parts 31 through 37 and 39 of this chapter and the requirements for a license set forth in section 81 of the Act to the extent that they transport or store byproduct material in the regular course of carriage for another or storage incident thereto.

■ 6. In § 30.33, paragraph (a)(4) is revised to read as follows:

§ 30.33 General requirements for issuance of specific licenses.

(a) * * *

(4) The applicant satisfies any special requirements contained in parts 32 through 37 and 39 of this chapter; and

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 7. The authority citation for part 32 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 8. In § 32.1, paragraph (b) is revised to read as follows:

§ 32.1 Purpose and scope.

* * * * *

(b) The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of part 30 of this chapter apply to applications, licenses and certificates of registration subject to this part, and the provisions of part 37 of this chapter apply to applications and licenses subject to this part.

* * * * *

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

■ 9. The authority citation for part 33 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 10. Section 33.1 is revised to read as follows:

§ 33.1 Purpose and scope.

This part prescribes requirements for the issuance of specific licenses of broad scope for byproduct material (''broad licenses'') and certain regulations governing holders of such licenses. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of parts 30 and 37 of this chapter apply to applications and licenses subject to this part.

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 11. The authority citation for part 34 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Atomic Energy Act of 2005 sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111). Section 34.45 also issued under Energy Reorganization Act sec. 206 (42 U.S.C. 5846).

■ 12. Section 34.1 is revised to read as follows:

§ 34.1 Purpose and scope.

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the requirements and provisions of parts 19, 20, 21, 30, 37, 71, 150, 170, and 171 of this chapter apply to applications and licenses subject to this part. This rule does not apply to medical uses of byproduct material.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 13. The authority citation for part 35 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201, 206 (42 U.S.C. 5841, 5842, 5846); sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 14. Section 35.1 is revised to read as follows:

§ 35.1 Purpose and scope.

This part contains the requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. The requirements and provisions of this part are in addition to, and not in substitution for, others in this chapter. The requirements and provisions of parts 19, 20, 21, 30, 37, 71, 170, and 171 of this chapter apply to applicants and licensees subject to this part unless specifically exempted.

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

■ 15. The authority citation for part 36 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Atomic Energy Act of 2005 sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 16. In § 36.1, paragraph (a) is revised to read as follows:

§ 36.1 Purpose and scope.

(a) This part contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. This part also contains radiation safety requirements for operating irradiators. The requirements of this part are in addition to other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 37, 71, 170, and 171 of this chapter apply to applications and licenses subject to this part. Nothing in this part relieves the licensee from complying with other applicable Federal, State and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

* * * * *

■ 17. Part 37 is added to read as follows:

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

Sec.

Subpart A—General Provisions

37.1 Purpose.
37.3 Scope.
37.5 Definitions.
37.7 Communications.
37.9 Interpretations.
37.11 Specific exemptions.
37.13 Information collection requirements: OMB approval.

Subpart B—Background Investigations and Access Control Program

37.21 Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.
37.23 Access authorization program requirements.
37.25 Background investigations.
37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.
37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.
37.31 Protection of information.
37.33 Access authorization program review.

Subpart C—Physical Protection Requirements During Use

37.41 Security program.
37.43 General security program requirements.
37.45 LLEA coordination.
37.47 Security zones.
37.49 Monitoring, detection, and assessment.
37.51 Maintenance and testing.
37.53 Requirements for mobile devices.
37.55 Security program review.
37.57 Reporting of events.

Subpart D—Physical Protection in Transit

37.71 Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.
37.73 Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.
37.75 Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.
37.77 Advance notification of shipment of category 1 quantities of radioactive material.
37.79 Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.
37.81 Reporting of events.

Subpart E—[Reserved]

Subpart F—Records

37.101 Form of records.
37.103 Record retention.

Subpart G—Enforcement

37.105 Inspections.
37.107 Violations.
37.109 Criminal penalties.

Appendix A to Part 37—Category 1 and Category 2 Radioactive Materials

Authority: Atomic Energy Act secs. 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234 (42 U.S.C. 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201a., 2232, 2233, 2273, 2282).

Subpart A—General Provisions

§ 37.1 Purpose.

This part has been established to provide the requirements for the physical protection program for any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Appendix A to this part. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this part authorizes possession of licensed material.

§ 37.3 Scope.

(a) Subparts B and C of this part apply to any person who, under the regulations in this chapter, possesses or uses at any site, an aggregated category 1 or category 2 quantity of radioactive material.

(b) Subpart D of this part applies to any person who, under the regulations of this chapter:

(1) Transports or delivers to a carrier for transport in a single shipment, a category 1 or category 2 quantity of radioactive material; or

(2) Imports or exports a category 1 or category 2 quantity of radioactive material; the provisions only apply to the domestic portion of the transport.

§ 37.5 Definitions.

As used in this part:

Access control means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

Act means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

Aggregated means accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

Agreement State means any state with which the Atomic Energy Commission or the U.S. Nuclear Regulatory

Commission has entered into an effective agreement under subsection 274b. of the Act. *Non-agreement State* means any other State.

Approved individual means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with subpart B of this part and who has completed the training required by § 37.43(c).

Background investigation means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

Becquerel (Bq) means one disintegration per second.

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute ''byproduct material'' within this definition;

(3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(4) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

Carrier means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

Category 1 quantity of radioactive material means a quantity of radioactive material meeting or exceeding the category 1 threshold in Table 1 of Appendix A to this part. This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

Category 2 quantity of radioactive material means a quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in Table 1 of Appendix A to this part. This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

Commission means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

Curie means that amount of radioactive material which disintegrates at the rate of 37 billion atoms per second.

Diversion means the unauthorized movement of radioactive material subject to this part to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

Escorted access means accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

Fingerprint orders means the orders issued by the U.S. Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

Government agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

License, except where otherwise specified, means a license for byproduct material issued pursuant to the regulations in parts 30 through 36 and 39 of this chapter;

License issuing authority means the licensing agency that issued the license, *i.e.* the U.S. Nuclear Regulatory Commission or the appropriate agency of an Agreement State;

Local law enforcement agency (LLEA) means a public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

Lost or missing licensed material means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

Mobile device means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

Movement control center means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

No-later-than arrival time means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be more than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

Person means—

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the DOE (except that the Department shall be considered a

person within the meaning of the regulations in 10 CFR chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat. 1842), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Reviewing official means the individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

Sabotage means deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

Safe haven means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

Security zone means any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Telemetric position monitoring system means a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

Trustworthiness and reliability are characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

Unescorted access means solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

United States, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

§ 37.7 Communications.

Except where otherwise specified or covered under the regional licensing program as provided in § 30.6(b) of this chapter, all communications and reports concerning the regulations in this part may be sent as follows:

(a) By mail addressed to: ATTN: Document Control Desk; Director, Office of Nuclear Reactor Regulation; Director, Office of New Reactors; Director, Office of Nuclear Material Safety and Safeguards; Director, Office of Federal and State Materials and Environmental Management Programs; or Director, Division of Security Policy, Office of Nuclear Security and Incident Response, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland 20852;

(c) Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html;* by email to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

§ 37.9 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretations of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

§ 37.11 Specific exemptions.

(a) The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

(b) Any licensee's NRC-licensed activities are exempt from the requirements of subparts B and C of this part to the extent that its activities are included in a security plan required by part 73 of this chapter.

(c) A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of subparts B, C, and D of this part. Except that any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 lbs) is not exempt from the requirements of this part. The licensee shall implement the following requirements to secure the radioactive waste:

(1) Use continuous physical barriers that allow access to the radioactive waste only through established access control points;

(2) Use a locked door or gate with monitored alarm at the access control point;

(3) Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(4) Immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

§ 37.13 Information collection requirements: OMB approval.

(a) The U.S. Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB has approved the information collection requirements

contained in this part under control number 3150–0214.

(b) The approved information collection requirements contained in this part appear in §§ 37.11, 37.21, 37.23, 37.25, 37.27, 37.29, 37.31, 37.33, 37.41, 37.43, 37.45, 37.49, 37.51, 37.55, 37.57, 37.71, 37.75, 37.77, 37.79, and 37.81.

Subpart B—Background Investigations and Access Authorization Program

§ 37.21 Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(a) *General.* (1) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subpart.

(2) An applicant for a new license and each licensee that would become newly subject to the requirements of this subpart upon application for modification of its license shall implement the requirements of this subpart, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(3) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subpart B shall implement the provisions of this subpart B before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(b) *General performance objective.* The licensee's access authorization program must ensure that the individuals specified in paragraph (c)(1) of this section are trustworthy and reliable.

(c) *Applicability.* (1) Licensees shall subject the following individuals to an access authorization program:

(i) Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) Reviewing officials.

(2) Licensees need not subject the categories of individuals listed in § 37.29(a)(1) through (13) to the investigation elements of the access authorization program.

(3) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(4) Licensees may include individuals needing access to safeguards information-modified handling under part 73 of this chapter in the access authorization program under this subpart B.

§ 37.23 Access authorization program requirements.

(a) *Granting unescorted access authorization.* (1) Licensees shall implement the requirements of this subpart for granting initial or reinstated unescorted access authorization.

(2) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by § 37.43(c) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(b) *Reviewing officials.* (1) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(2) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with § 37.25(b).

(3) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(4) Reviewing officials cannot approve other individuals to act as reviewing officials.

(5) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) The individual is subject to a category listed in § 37.29(a).

(c) *Informed consent.* (1) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of § 37.25(b). A signed consent must be obtained prior to any reinvestigation.

(2) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(d) *Personal history disclosure.* Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this subpart is sufficient cause for denial or termination of unescorted access.

(e) *Determination basis.* (1) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this subpart.

(2) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this subpart and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to

any individual based on information obtained at any time during the background investigation.

(3) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(4) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(5) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(f) *Procedures.* Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(g) *Right to correct and complete information.* (1) Prior to any final adverse determination, licensees shall provide each individual subject to this subpart with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification.

(2) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(h) *Records.* (1) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(2) The licensee shall retain a copy of the current access authorization program procedures as a record for 3 years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

(3) The licensee shall retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

§ 37.25 Background investigations.

(a) *Initial investigation.* Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the 7 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(1) Fingerprinting and an FBI identification and criminal history records check in accordance with § 37.27;

(2) Verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (*e.g.,* driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with § 37.31. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;

(3) Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent 7 years before the date of application;

(4) Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

(5) Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this subpart must be limited to whether the individual has been and continues to be trustworthy and reliable;

(6) The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (*e.g.,* seek references not supplied by the individual); and

(7) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information

within a time frame deemed appropriate by the licensee but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

(b) *Grandfathering.* (1) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(2) Individuals who have been determined to be trustworthy and reliable under the provisions of part 73 of this chapter or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of part 73 of this chapter or a security order. Security order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(c) *Reinvestigations.* Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with § 37.27. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

§ 37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(a) *General performance objective and requirements.* (1) Except for those individuals listed in § 37.29 and those individuals grandfathered under § 37.25(b), each licensee subject to the provisions of this subpart shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the Commission for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(2) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(3) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) The previous access was terminated under favorable conditions.

(4) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this subpart, the Fingerprint Orders, or part 73 of this chapter. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of § 37.31(c).

(5) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(b) *Prohibitions.* (1) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(2) Licensees may not use information received from a criminal history records check obtained under this subpart in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(c) *Procedures for processing of fingerprint checks.* (1) For the purpose of complying with this subpart, licensees shall use an appropriate method listed in § 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB–05 B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 1–630–829–9565, or by email to *FORMS.Resource@nrc.gov.* Guidance on submitting electronic fingerprints can be found at *http://www.nrc.gov/site-help/e-submittals.html.*

(2) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301–492–3531.) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public Web site. (To find the current fee amount, go to the Electronic Submittals page at *http://www.nrc.gov/site-help/e-submittals.html* and see the link for the Criminal History Program under Electronic Submission Systems.)

(3) The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's

application(s) for criminal history records checks.

§ 37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(a) Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(1) An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(2) A Member of Congress;

(3) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(4) The Governor of a State or his or her designated State employee representative;

(5) Federal, State, or local law enforcement personnel;

(6) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(7) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;

(8) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(9) Emergency response personnel who are responding to an emergency;

(10) Commercial vehicle drivers for road shipments of category 2 quantities of radioactive material;

(11) Package handlers at transportation facilities such as freight terminals and railroad yards;

(12) Any individual who has an active Federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(13) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(b) Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

(1) National Agency Check;

(2) Transportation Worker Identification Credentials (TWIC) under 49 CFR part 1572;

(3) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR part 555;

(4) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR part 73;

(5) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR part 1572; and

(6) Customs and Border Protection's Free and Secure Trade (FAST) Program.

§ 37.31 Protection of information.

(a) Each licensee who obtains background information on an individual under this subpart shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

(b) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(c) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(1) Upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(2) The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(d) The licensee shall make background investigation records obtained under this subpart available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(e) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

§ 37.33 Access authorization program review.

(a) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this subpart and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access program content and implementation.

(b) The results of the reviews, along with any recommendations, must be

documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(c) Review records must be maintained for 3 years.

Subpart C—Physical Protection Requirements During Use

§ 37.41 Security program.

(a) *Applicability.* (1) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subpart.

(2) An applicant for a new license and each licensee that would become newly subject to the requirements of this subpart upon application for modification of its license shall implement the requirements of this subpart, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(3) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of subpart C shall provide written notification to the NRC regional office specified in § 30.6 of this chapter at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(b) *General performance objective.* Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(c) *Program features.* Each licensee's security program must include the program features, as appropriate, described in §§ 37.43, 37.45, 37.47, 37.49, 37.51, 37.53, and 37.55.

§ 37.43 General security program requirements.

(a) *Security plan.* (1) Each licensee identified in § 37.41(a) shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this subpart. The security plan must, at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this subpart; and

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this subpart.

(2) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(3) A licensee shall revise its security plan as necessary to ensure the effective implementation of Commission requirements. The licensee shall ensure that:

(i) The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) The affected individuals are instructed on the revised plan before the changes are implemented.

(4) The licensee shall retain a copy of the current security plan as a record for 3 years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

(b) *Implementing procedures.* (1) The licensee shall develop and maintain written procedures that document how the requirements of this subpart and the security plan will be met.

(2) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(3) The licensee shall retain a copy of the current procedure as a record for 3 years after the procedure is no longer needed. Superseded portions of the procedure must be retained for 3 years after the record is superseded.

(c) *Training.* (1) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

(ii) The responsibility to report promptly to the licensee any condition that causes or may cause a violation of Commission requirements;

(iii) The responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) The appropriate response to security alarms.

(2) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(3) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) Review of the training requirements of paragraph (c) of this section and any changes made to the security program since the last training;

(ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of NRC inspections; and

(iv) Relevant results of the licensee's program review and testing and maintenance.

(4) The licensee shall maintain records of the initial and refresher training for 3 years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(d) *Protection of information.* (1) Except as provided in paragraph (d)(9) of this section, licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(2) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(3) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures; and

(ii) If the individual has not been authorized for unescorted access to

category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in § 37.25(a)(2) through (a)(7).

(4) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in § 37.29(a)(1) through (13); or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in § 37.25(a)(2) through (a)(7), has been provided by the security service provider.

(5) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

(6) Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(7) When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

(8) The licensee shall retain as a record for 3 years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan or implementing procedures.

(9) Licensees that possess safeguards information or safeguards information-modified handling are subject to the requirements of § 73.21 of this chapter, and shall protect any safeguards information or safeguards information-modified handling in accordance with the requirements of that section.

§ 37.45 LLEA coordination.

(a) A licensee subject to this subpart shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(1) A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with this subpart; and

(2) A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(b) The licensee shall notify the appropriate NRC regional office listed in § 30.6(a)(2) of this chapter within 3 business days if:

(1) The LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(2) The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(c) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for 3 years.

(d) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

§ 37.47 Security zones.

(a) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee-established security zones. Security zones may be permanent or temporary.

(b) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(c) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(1) Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(2) Direct control of the security zone by approved individuals at all times; or

(3) A combination of continuous physical barriers and direct control.

(d) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(e) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

§ 37.49 Monitoring, detection, and assessment.

(a) *Monitoring and detection.* (1) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

(2) Monitoring and detection must be performed by:

(i) A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility; or

(ii) Electronic devices for intrusion detection alarms that will alert nearby facility personnel; or

(iii) A monitored video surveillance system; or

(iv) Direct visual surveillance by approved individuals located within the security zone; or

(v) Direct visual surveillance by a licensee designated individual located outside the security zone.

(3) A licensee subject to this subpart shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(A) Electronic sensors linked to an alarm; or

(B) Continuous monitored video surveillance; or

(C) Direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(b) *Assessment.* Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(c) *Personnel communications and data transmission.* For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(1) Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(2) Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(d) *Response.* Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

§ 37.51 Maintenance and testing.

(a) Each licensee subject to this subpart shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this part must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(b) The licensee shall maintain records on the maintenance and testing activities for 3 years.

§ 37.53 Requirements for mobile devices.

Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(a) Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(b) For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

§ 37.55 Security program review.

(a) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of this subpart and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

(b) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(c) The licensee shall maintain the review documentation for 3 years.

§ 37.57 Reporting of events.

(a) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the NRC's Operations Center (301–816–5100). In no case shall the notification to the NRC be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(b) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the NRC's Operations Center (301–816–5100).

(c) The initial telephonic notification required by paragraph (a) of this section must be followed within a period of 30 days by a written report submitted to the NRC by an appropriate method listed in § 37.7. The report must include sufficient information for NRC analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

Subpart D—Physical Protection in Transit

§ 37.71 Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.

A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the Commission or an Agreement State shall meet the license verification provisions listed below instead of those listed in § 30.41(d) of this chapter:

(a) Any licensee transferring category 1 quantities of radioactive material to a licensee of the Commission or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(b) Any licensee transferring category 2 quantities of radioactive material to a licensee of the Commission or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the

receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(c) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(d) The transferor shall keep a copy of the verification documentation as a record for 3 years.

§ 37.73 Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.

(a) For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in §§ 37.75(a) and (e); 37.77; 37.79(a)(1), (b)(1), and (c); and 37.81(a), (c), (e), (g) and (h).

(b) For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in §§ 37.75(b) through (e); 37.79(a)(2), (a)(3), (b)(2), and (c); and 37.81(b), (d), (f), (g), and (h). For those shipments of category 2 quantities of radioactive material that meet the criteria of § 71.97(b) of this chapter, the shipping licensee shall also comply with the advance notification provisions of § 71.97 of this chapter.

(c) The shipping licensee shall be responsible for meeting the requirements of this subpart unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this subpart.

(d) Each licensee that imports or exports category 1 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in §§ 37.75(a)(2) and (e); 37.77; 37.79(a)(1), (b)(1), and (c); and 37.81(a), (c), (e), (g), and (h) for the domestic portion of the shipment.

(e) Each licensee that imports or exports category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in §§ 37.79(a)(2), (a)(3), and (b)(2); and 37.81(b), (d), (f), (g), and (h) for the domestic portion of the shipment.

§ 37.75 Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(a) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(1) Preplan and coordinate shipment arrival and departure times with the receiving licensee;

(2) Preplan and coordinate shipment information with the governor or the governor's designee of any State through which the shipment will pass to:

(i) Discuss the State's intention to provide law enforcement escorts; and

(ii) Identify safe havens; and

(3) Document the preplanning and coordination activities.

(b) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(c) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(d) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (b) of this section, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(e) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for 3 years.

§ 37.77 Advance notification of shipment of category 1 quantities of radioactive material.

As specified in paragraphs (a) and (b) of this section, each licensee shall provide advance notification to the NRC and the governor of a State, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the State, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(a) *Procedures for submitting advance notification.* (1) The notification must be made to the NRC and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at *http://nrc-stp.ornl.gov/special/designee.pdf.* A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The notification to the NRC may be made by email to *RAMQC_ SHIPMENTS@nrc.gov* or by fax to 301–816–5151.

(2) A notification delivered by mail must be postmarked at least 7 days before transport of the shipment commences at the shipping facility.

(3) A notification delivered by any means other than mail must reach NRC at least 4 days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the State.

(b) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(2) The license numbers of the shipper and receiver;

(3) A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(4) The point of origin of the shipment and the estimated time and date that shipment will commence;

(5) The estimated time and date that the shipment is expected to enter each State along the route;

(6) The estimated time and date of arrival of the shipment at the destination; and

(7) A point of contact, with a telephone number, for current shipment information.

(c) *Revision notice.* (1) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the State or the governor's designee and to the NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) A licensee shall promptly notify the governor of the State or the governor's designee of any changes to the information provided in accordance with paragraphs (b) and (c)(1) of this section. The licensee shall also immediately notify the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 of any such changes.

(d) *Cancellation notice.* Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(e) *Records.* The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 3 years.

(f) *Protection of information.* State officials, State employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in § 37.77(b) shall protect that information against unauthorized disclosure as specified in § 73.21 of this chapter.

§ 37.79 Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(a) *Shipments by road.* (1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, 7 days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(A) Notifications to the communication center and law enforcement agencies;

(B) Communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(C) Loss of communications; and

(D) Responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(2) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(3) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(b) *Shipments by rail.* (1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(2) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(c) *Investigations.* Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

§ 37.81 Reporting of events.

(a) The shipping licensee shall notify the appropriate LLEA and the NRC's Operations Center (301–816–5100) within 1 hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by § 37.79(c), the shipping licensee will provide agreed upon updates to the NRC's Operations Center on the status of the investigation.

(b) The shipping licensee shall notify the NRC's Operations Center (301–816–5100) within 4 hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the NRC's Operations Center.

(c) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the NRC's Operations Center (301–816–5100) upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

(d) The shipping licensee shall notify the NRC's Operations Center (301–816–5100) as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(e) The shipping licensee shall notify the NRC's Operations Center (301–816–5100) and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(f) The shipping licensee shall notify the NRC's Operations Center (301–816–5100) as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(g) The initial telephonic notification required by paragraphs (a) through (d) of this section must be followed within a period of 30 days by a written report submitted to the NRC by an appropriate method listed in § 37.7. A written report is not required for notifications on suspicious activities required by paragraphs (c) and (d) of this section. In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The report must set forth the following information:

(1) A description of the licensed material involved, including kind, quantity, and chemical and physical form;

(2) A description of the circumstances under which the loss or theft occurred;

(3) A statement of disposition, or probable disposition, of the licensed material involved;

(4) Actions that have been taken, or will be taken, to recover the material; and

(5) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(h) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

Subpart E—[Reserved]

Subpart F—Records

§ 37.101 Form of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 37.103 Record retention.

Licensees shall maintain the records that are required by the regulations in this part for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility's license. All records related to this part may be destroyed upon Commission termination of the facility license.

Subpart G—Enforcement

§ 37.105 Inspections.

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, use, acquisition, import, export, or transfer of category 1 or category 2 quantities of radioactive material.

§ 37.107 Violations.

(a) The Commission may obtain an injunction or other court order to

prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended:

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 37.109 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in this part 37 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in this part 37 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 37.1, 37.3, 37.5, 37.7, 37.9, 37.11, 37.13, 37.107, and 37.109.

Appendix A to Part 37—Category 1 and Category 2 Radioactive Materials

Table 1—Category 1 and Category 2 Threshold

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

Note: *Calculations Concerning Multiple Sources or Multiple Radionuclides*

The ''sum of fractions'' methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this part.

I. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity at the location is less than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this part apply.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

R_1 = total activity for radionuclide 1
R_2 = total activity for radionuclide 2
R_N = total activity for radionuclide n
AR_1 = activity threshold for radionuclide 1
AR_2 = activity threshold for radionuclide 2
AR_N = activity threshold for radionuclide n

$$\sum_{1}^{n}\left[\frac{R_1}{AR_1}+\frac{R_2}{AR_2}+\frac{R_n}{AR_n}\right]\geq 1.0$$

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

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

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

■ 19. In § 39.1, paragraph (a) is revised to read as follows:

§ 39.1 Purpose and scope.

(a) This part prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well. This part also prescribes radiation safety requirements for persons using licensed materials in these operations. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 37, 40, 70, 71, and 150 of this chapter apply to applicants and licensees subject to this part.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 20. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub. L. 95–604, Title II, 92 Stat. 3033 3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 21. In § 51.22, the introductory text of paragraph (c)(3) is revised to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 37, 39, 40, 50, 51, 52, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 790.

■ 23. In § 71.97, the introductory text of paragraph (b) is revised to read as follows:

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

* * * * *

(b) Advance notification is also required under this section for the shipment of licensed material, other than irradiated fuel, meeting the following three conditions:

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 25. A new § 73.35 is added to read as follows:

§ 73.35 Requirements for physical protection of irradiated reactor fuel (100 grams or less) in transit.

Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel weighing 100 grams (0.22 pounds) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 meter (3.3 feet) from any accessible surface without intervening shielding, shall follow the physical protection requirements for category 1 quantities of radioactive material in subpart D of part 37 of this chapter.

Dated at Rockville, Maryland, this 8th day of March, 2013.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

Note: This Appendix Will Not Appear in the *Code of Federal Regulations.*

APPENDIX A TO THIS FINAL RULE—REGULATORY FLEXIBILITY ANALYSIS FOR THE AMENDMENTS TO 10 CFR PARTS 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, AND 73 (PHYSICAL PROTECTION OF BYPRODUCT MATERIAL)

I. Background

The Regulatory Flexibility Act (RFA), as amended 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The U.S. Nuclear Regulatory Commission (NRC) has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities.

Description of the Reasons That Action by the Agency Is Being Considered

The NRC has long participated in efforts to address radioactive source protection and security. The terrorist attacks of September 11, 2001, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant radioactive materials could lead to their unauthorized use in a radiological dispersal device or a radiological exposure device.

Commission regulations provide requirements for the safe use, transport, and control of licensed material. A licensee's loss of control of risk-significant radioactive material, whether it is inadvertent or through a deliberate act, could result in significant adverse impacts that could reasonably constitute a threat to the public health and safety or the common defense and security of the United States. After the attacks of September 11, 2001, the Commission determined that certain licensed material should be subject to enhanced security provisions and safeguarded during transport, and that individuals with unescorted access to risk-significant radioactive material should be subject to background investigations. For additional information see the Discussion portion of the Statements of Consideration (SOC).

Succinct Statement of the Objectives of, and Legal Basis for, the Final Rule

The objective of this rule is to establish generically applicable security requirements for the protection of category 1 and category 2 quantities of radioactive materials possessed by certain NRC and Agreement State licensees. These security requirements are similar to the requirements imposed on these licensees through the NRC's applicable previously-issued security orders. The NRC has determined that it is preferable to regulate through rulemaking rather than order because notice and comment rulemaking is an open and transparent process that facilitates public participation. In developing the final rule, the NRC considered, among other things, the various orders, lessons-learned during implementation, the recommendations from the Independent Review Panel and the Materials Working Group, and stakeholder comments. The rule also considered a petition for rulemaking submitted by the State of Washington. For additional information see the Discussion portion of the SOC. The authority citation sections of the final rule contain the statutory authority for the rule.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The final rule would affect about 300 NRC licensees and about 1,100 Agreement State licensees. This includes a wide range of licensees, including pool-type irradiator licensees; manufacturer and distributor licensees; medical facilities with gamma knife devices; self-shielded irradiator licensees (including blood irradiators); teletherapy unit licensees; radiographers; well loggers; broad scope users; radioisotope thermoelectric generator licensees; and licensees that ship or prepare for shipment category 1 or category 2 quantities of radioactive material. Some of these licensees would be considered small entities. In fiscal year 2008, about 26 percent of materials licensees qualified as small entities. Using the same percentage, approximately 364 of the licensees that will be affected by the rule would be considered small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements, and the Type of Professional Skills Necessary for Preparation of Reports and Records

Licensees will be required to: (1) Develop procedures for implementation of the security provisions; (2) develop a security plan that describes how security is being implemented; (3) conduct training on the procedures and security plan; (4) conduct background investigations for those individuals permitted access to category 1 or category 2 quantities of radioactive material; (5) coordinate with local law enforcement agencies (LLEAs) so the LLEAs would be better prepared to respond in an emergency; (6) conduct preplanning and coordination activities before shipping radioactive material; and (7) implement security measures for the protection of the radioactive material. Licensees will be required to promptly report any attempted or actual theft or diversion of the radioactive material. Licensees will be required to keep copies of the security plan, procedures, background investigation records, training records, and documentation that certain activities have occurred. For additional information on the requirements, see the SOC or the final rule text. No special skills are necessary for the preparation of reports or records.

On average, a licensee would have a one-time cost of approximately $23,375 and an annual cost of approximately $21,736 to fully implement the final rule. Much of this cost would result from the requirements to have procedures, conduct training, and to develop a security plan. Although not required by the various orders, many licensees may have developed procedures and conducted training that may require only minor revisions; if so, the actual cost may be lower. Additional large costs are the annual program review and the maintenance and testing of the security-related equipment. The program review is important for licensees to review the effectiveness of the program and to ensure that requirements are being implemented. Maintenance and testing is essential to ensure that the equipment is operational and available when needed. More information on the cost of the rule is contained in the Regulatory Analysis.

Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rule

Several U.S. Government programs involve fingerprinting and an FBI identification and criminal history records check. These include the National Agency Check; Transportation Worker Identification Credentials in accordance with 49 CFR 1572; Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances in accordance with 27 CFR 555; Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR 73; Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR 1572; and Customs and Border Protection's Free and Secure Trade Program. Any individual that has favorably undergone the background investigation required by these programs would be relieved from the fingerprinting and FBI criminal history records check element of the final rule as long as the licensee has appropriate documentation. Any individual who has an active Federal security clearance would also be relieved assuming appropriate documentation is provided.

The Department of Transportation requires security plans for the transport of highway route control quantities of radioactive material in accordance with 49 CFR 172.800. This provision covers only a small portion of the category 1 and category 2 quantities of radioactive material covered by the rule.

The NRC is not aware of any other relevant Federal rules that may duplicate, overlap, or conflict with the final rule.

Description of any significant alternatives to the final rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the final rule on small entities, including alternatives considered, such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

As noted earlier, some of the licensees that would be impacted by the final rule are small businesses. The rule would impose the minimum requirements that the NRC believes are necessary to adequately protect the public health and safety and the common defense and security. Therefore, the NRC could not generically grant relief to small entities to allow them to implement less effective measures. The final rule provides some flexibility in the particular measures that a licensee can choose to employ. Licensees affected by the rule have already implemented the bulk of the rule's requirements in response to various orders.

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Certain Outbound Property Transfers by Domestic Corporations; Certain Stock Distributions by Domestic Corporations; Indirect Stock Transfers and the Coordination Rule Exceptions; Transfers of Stock or Securities in Outbound Asset Reorganizations; Final Rules and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9614]

RIN 1545–AM97

Certain Outbound Property Transfers by Domestic Corporations; Certain Stock Distributions by Domestic Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that apply to transfers of certain property by a domestic corporation to a foreign corporation in certain nonrecognition exchanges, or to distributions of stock of certain foreign corporations by a domestic corporation in certain nonrecognition distributions. The final regulations also establish reporting requirements for property transfers and stock distributions to which the final regulations apply. The regulations affect domestic corporations that transfer property to foreign corporations in certain nonrecognition transactions, or that distribute the stock of certain foreign corporations in certain nonrecognition distributions, and certain domestic shareholders of those domestic corporations.

DATES: *Effective date:* These regulations are effective on March 19, 2013.

Applicability dates: For dates of applicability, see §§ 1.367(a)–1(g), 1.367(a)–3(g), 1.367(a)–7(j), 1.367(b)–6, 1.1248–1(g), 1.1248–6(e), 1.1248–8(d), 1.1248(f)–3(b), and 1.6038B–1(g).

FOR FURTHER INFORMATION CONTACT: Robert B. Williams, Jr., (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2183.

The collections of information are in §§ 1.367(a)–7(c) and (e)(2), 1.367(a)–8(c), 1.1248(f)–2(a)(3), (b)(1) and (c)(1), and 1.6038B–1(c)(6). The collections of information are mandatory. The likely respondents are domestic corporations.

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 control number.

Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On August 20, 2008, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued proposed regulations under sections 367, 1248, and 6038B of the Internal Revenue Code (Code) (2008 proposed regulations) concerning transfers of property by a domestic corporation to a foreign corporation in an exchange described in section 361(a) or (b) (section 361 exchange), and certain nonrecognition distributions of stock of a foreign corporation by a domestic corporation (REG–209006–89; 73 FR 49278, 2008–41 IRB 867). A correction to the 2008 proposed regulations was published in the **Federal Register** on September 26, 2008 (73 FR 56535; 2008–41 IRB 867). No public hearing on the 2008 proposed regulations was requested or held; however, comments were received. Based, in part, on comments received, the Treasury Department and the IRS adopt the 2008 proposed regulations, with modifications, as final regulations. As discussed in paragraph G. of this preamble, a portion of the 2008 proposed regulations is adopted, with modifications, in temporary regulations published elsewhere in this issue of the **Federal Register**. Those temporary regulations also modify final regulations under section 367(a) concerning transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange. All comments will be available at *www.regulations.gov* or upon request.

Summary of Comments and Explanation of Revisions

A. Regulations Under Section 367(a)(5)

1. Overview

In general, section 367(a)(5) provides that the exceptions to section 367(a)(1) in section 367(a)(2) and (a)(3) do not apply in the case of a section 361 exchange in which a domestic corporation (U.S. transferor) transfers assets to a foreign corporation, unless the U.S. transferor is controlled (within the meaning of section 368(c)) by five or fewer (but at least one) domestic corporations (each a control group member, and together the control group) and basis adjustments and other conditions as provided in regulations are satisfied. The policy underlying section 367(a)(5) is the protection of corporate-level gain on appreciated property following the repeal of the *General Utilities* doctrine. See H.R. Rep. No 795, 100th Cong., 2d Sess. 60 (1988).

The 2008 proposed regulations would implement section 367(a)(5) by providing that, as a general rule, the exceptions to section 367(a)(1) do not apply to a transfer of certain property by the U.S. transferor to a foreign acquiring corporation in a section 361 exchange. An exception to the general rule is provided, at the election of the U.S. transferor and members of the control group (elective exception), subject to conditions that are intended, in part, to ensure that the net gain (if any) realized by the U.S. transferor in connection with the transfer of property subject to section 367(a) (defined as *inside gain*) is, in the aggregate, recognized currently by the U.S. transferor or, to the extent permitted, preserved in the stock received in the reorganization by certain domestic corporate shareholders of the U.S. transferor.

Section 337(d) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 (concerning the repeal of the *General Utilities* doctrine), including regulations providing for appropriate coordination of the provisions of section 337 with the provisions of the Code relating to taxation of foreign corporations and their shareholders.

2. Calculation of Inside Gain

In addition to the adjusted basis of certain transferred property, for purposes of computing inside gain, the 2008 proposed regulations take into account certain liabilities of the U.S. transferor that would give rise to a deduction when paid (deductible liabilities). Under the 2008 proposed regulations, a deductible liability would be defined as a liability assumed in the section 361 exchange or satisfied in connection with the reorganization (within the meaning of section 361(c)(3)), but only if payment of the liability would give rise to a deduction. Section 361(c)(3) provides that the U.S. transferor recognizes no gain or loss on the satisfaction of a liability with stock received in connection with the reorganization, but does not prevent the U.S. transferor from obtaining a deduction on payment of the liability with the stock received. The policy for allowing a deductible liability to reduce

inside gain is that the U.S. transferor has not received a tax benefit for such liability but the liability reduces the value of the stock received. Accordingly, under the final regulations, a deductible liability is limited to a liability that is assumed in the section 361 exchange if payment of the liability would give rise to a deduction.

Several comments suggested that other tax attributes of the U.S. transferor should also be taken into account in computing inside gain (in particular, net operating losses and foreign tax credits) because those other tax attributes are similar to the adjusted basis of the transferred property and deductible liabilities. Recognizing the complexity that would result if other tax attributes were taken into account, other comments suggested that the final regulations permit the U.S. transferor to elect to recognize an amount of gain sufficient to utilize all or a portion of any additional tax attributes. Another comment, however, considered this recommendation to be inconsistent with the basic approach of section 367(a)(1), which only takes into account the adjusted basis of the transferred property in determining the amount of gain required to be recognized by the U.S. transferor.

The Treasury Department and the IRS believe that taking into account other tax attributes of the U.S. transferor in determining inside gain would substantially increase the complexity of the final regulations and IRS examinations of these transactions. In addition, a U.S. transferor can utilize any other available tax attributes by not electing to apply the elective exception. Accordingly, the comment was not adopted.

3. Built-In Loss in Stock of the U.S. Transferor Corporation

To qualify for the elective exception under the 2008 proposed regulations, each control group member must reduce its adjusted basis (as determined under section 358) in the stock received in the reorganization by the amount (if any) that its portion of the inside gain exceeds the gain (or loss) in that stock (outside gain) but for the application of section 367(a)(5). In certain cases, the required basis adjustment will convert built-in loss stock into built-in gain stock. For example, assume that prior to the application of the elective exception the control group member has a $150x adjusted basis (as determined under section 358) in stock received that has a fair market value of $100x (that is, there is a $50x built-in loss in the stock). If the control group member's share of inside gain is $30x, its adjusted basis in the stock received must be reduced to $70x, resulting in $30x of built-in gain in the stock and eliminating the $50x pre-existing built-in loss.

Several comments suggested that reducing the adjusted basis of built-in loss stock to this extent is inappropriate and recommended that final regulations treat a reduction to an existing built-in loss the same as a reduction to basis that would increase built-in gain. For example, under the previous assumed facts, the approach in these comments would reduce the adjusted basis of the stock by $30x (the control group member's share of inside gain), reducing the built-in loss to $20x.

Another comment recommended that the provisions be modified to preserve both the domestic corporate shareholder's share of inside gain as well as the built-in gain (or loss) existing in the stock received before any required basis adjustment. Specifically, the comment suggested that any outside built-in gain (loss) should be treated as a deferred gain (loss) that would be taken into account based on principles similar to those of section 267(a)(1).

Consistent with the legislative history to section 367(a)(5), the Treasury Department and the IRS believe that the amount of outside built-in gain or loss should not affect the required reduction to the adjusted basis of the stock received in the transaction. That is, the basis must be reduced to an amount such that the gain in the stock corresponds to the proportionate amount of inside gain. See S. Rep. No. 445, 100th Cong., 2d Sess. 62–3 (1988). Therefore, the final regulations do not adopt these recommendations. The final regulations do, however, clarify that if a U.S. transferor does not have inside gain, that is, there is no net built-in gain in the U.S. transferor's assets, stock basis adjustments are not required to be made by control group members, even if the outside stock loss of a control group member is greater than the net built-in loss attributable to the control group member.

4. Disposition of a Significant Amount of Section 367(a) Property

The 2008 proposed regulations would deny the application of the elective exception if, with a principal purpose of avoiding U.S. tax, the foreign acquiring corporation disposes of a significant amount of the property received from the U.S. transferor (disposition rule).

Several comments recommended that the disposition rule be conformed to the provisions of § 1.367(a)–8 concerning gain recognition agreements. Specifically, one comment recommended that a defined period be set for the reach of the disposition rule. In this regard, the gain recognition agreement provisions generally require gain recognition only if a triggering event occurs during the term of the gain recognition agreement, which is the period ending with the close of the fifth full taxable year (not less than 60 months) following the year in which the transfer requiring the gain recognition agreement occurred.

Another comment recommended that the final regulations include provisions similar to those of the gain recognition provisions in § 1.367(a)–8(k)(14) to address nonrecognition transfers of property. Those provisions generally provide that a transfer of assets subject to a gain recognition agreement during the term of the gain recognition agreement in certain nonrecognition transactions will not be triggering events if specified conditions are satisfied. Other comments suggested that this disposition rule is not necessary because § 1.367(a)–2T(c)(1) denies the exception under section 367(a)(3) in certain cases when the transferred property is re-transferred to another person as part of the same transaction.

The Treasury Department and the IRS believe that safeguards in addition to § 1.367(a)–2T(c)(1) are needed in the case of outbound reorganizations that qualify for the elective exception, but agree that adopting certain aspects of the gain recognition agreement provisions is appropriate. Accordingly, the final regulations deny the elective exception only if, with a principal purpose of avoiding U.S. tax, the foreign acquiring corporation disposes of a significant amount of the property received from the U.S. transferor during the 60-month period that begins on the date of distribution or transfer (within the meaning of § 1.381(b)–1(b)), which generally is the date on which the transfer of property by the U.S. transferor to the foreign acquiring corporation is completed.

Furthermore, the final regulations provide that property that is subsequently transferred pursuant to a nonrecognition provision is not treated as disposed of for purposes of the disposition rule, provided such transfer satisfies, and is treated in a manner consistent with the principles underlying § 1.367(a)–8(k) (concerning non-triggering events with respect to gain recognition agreements) and more generally the provisions of § 1.367(a)–8 concerning gain recognition agreements.

Finally, one comment suggested that dispositions of property in the ordinary course of business should not deny the application of the elective exception,

even if the disposition occurs within the two-year ''presumption of tax avoidance'' period following the reorganization. The Treasury Department and the IRS agree with this comment. Accordingly, the final regulations provide an exception for dispositions of property occurring in the ordinary course of business.

5. Definitions of Section 367(a) Property and Section 367(d) Property

Subject to a special rule, the 2008 proposed regulations define section 367(a) property as any property other than section 367(d) property. The 2008 proposed regulations define section 367(d) property as property to which section 367(d) applies.

In response to a comment, the final regulations clarify that section 367(d) property is property described in section 936(h)(3)(B). Section 367(d)(1) provides that, except as provided in regulations, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361, section 367(d) (and not section 367(a)) applies to such transfer. Accordingly, income or gain attributable to the transfer of property by a U.S. person to a foreign corporation in a section 351 exchange or section 361 exchange is taken into account either in accordance with section 367(d)(2)(A)(ii)(I) or (d)(2)(A)(ii)(II), or in accordance with section 367(a) and the regulations thereunder in the case of a section 361 exchange subject to section 367(a)(5). For guidance concerning transfers of section 367(d) property in outbound asset reorganizations, see Notice 2012–39 (IRB 2012–31) (see § 601.601(d)(2)(ii)(*b*) of this chapter).

6. Treatment of a RIC, REIT, or S Corporation

One comment suggested that if the policy of section 367(a)(5) is to preserve U.S. taxing jurisdiction over corporate-level gain, then section 367(a)(5) should not generally apply to a regulated investment company (RIC), real estate investment trust (REIT), or S corporation (collectively, special corporate entities), because those entities generally are not subject to corporate-level tax. The comment further suggested that to the extent those special corporate entities are subject to corporate-level tax, the final regulations should incorporate a targeted gain recognition rule to address those limited situations. In contrast, another comment noted that exempting special corporate entities from the application of section 367(a)(5) could facilitate the use of special corporate entities to avoid U.S. tax. A third comment asserted that, at a minimum, even though special corporate entities may not generally be subject to corporate-level tax, special corporate entities should be permitted to be members of the control group, because the amount of inside gain preserved in stock received by special corporate entities could, when recognized, be wholly or partly subject to U.S. tax in the hands of shareholders of the special corporate entities.

The Treasury Department and the IRS remain concerned about exempting special corporate entities from the application of section 367(a)(5). Section 367(a)(1) addresses transfers of certain appreciated property by a United States person to a foreign corporation in certain nonrecognition exchanges described in subchapter C of the Code. This general rule applies equally to special corporate entities, as it does to any U.S. person, including any domestic corporation. Although special corporate entities are generally not subject to entity-level tax, the underlying income (including built-in gain in assets) flows through to their owners. Because the owners of special corporate entities generally receive a basis determined under section 358 in the shares of the foreign acquiring corporation, preservation of corporate-level tax on the inside gain is not assured.

The Treasury Department and the IRS also remain concerned about allowing special corporate entities to be members of the control group. If a special corporate entity was allowed to be a member of the control group, whether the inside gain preserved in the hands of a special corporate entity is ever subject to U.S. corporate tax would depend on the extent of the domestic corporate ownership of the special corporate entity at the time the gain is recognized. The domestic corporate ownership at the time the gain is recognized may decrease or increase from the time the reorganization occurred.

Accordingly, the final regulations do not adopt the recommendations to provide relief from the application of section 367(a)(5) to special corporate entities, or allow special corporate entities to be control group members.

7. Indirect Stock Ownership

Several comments recommended that the final regulations permit indirect ownership of the U.S. transferor through partnerships or foreign corporations to be taken into account for purposes of satisfying the control requirement of section 367(a)(5). Section 367(a)(5), however, incorporates the control requirement of section 368(c), which requires the direct ownership of stock. Furthermore, there is no indication in the legislative history to section 367(a)(5) that indirect stock ownership should also be considered for this purpose. In addition, as noted in the preamble to the 2008 proposed regulations, the Treasury Department and the IRS are concerned with the additional complexity that would result if indirect ownership were taken into account. Thus, the final regulations do not adopt this recommendation.

8. Treatment of Affiliated Group Members as a Single Corporation

The 2008 proposed regulations provide that members of an affiliated group of corporations (within the meaning of section 1504) are treated as a single corporation for purposes of the control requirement of section 367(a)(5). Several comments stated that the wording of this aggregation rule could be read to suggest that the affiliated group members are also treated as a single corporation for other purposes, including, for example, to determine the amount of any required stock basis adjustments. The final regulations revise the aggregation rule to clarify that affiliated group members are treated as a single corporation only for purposes of the control requirement.

9. Transfers Described in Other Nonrecognition Provisions

The 2008 proposed regulations clarify that section 367(a)(5) applies to a transfer of property described in section 351 if the transfer is also described in section 361(a) or (b). This clarification ensures that the policies underlying section 367(a)(5) are not undermined by transfers described in section 361(a) or (b) that also qualify for nonrecognition under section 351.

One comment suggested that transfers described in section 361(a) or (b) could also be described in nonrecognition provisions other than section 351, such as section 354. In response to this comment, the general rule in the final regulations is modified to provide that, unless an exception applies, the U.S. transferor recognizes any gain realized with respect to section 367(a) property. Thus, for purposes of recognizing gain under the general rule it is irrelevant whether, in addition to section 361(a) or (b), the transfer is also eligible for nonrecognition treatment under other exchanges enumerated in section 367(a)(1). Moreover, the general rule is issued under regulatory authority granted under both section 367(a)(5) and section 337(d). Accordingly, if a transfer of items of property that is described in

section 361(a) or (b) is also described in a nonrecognition provision that is not enumerated in section 367(a)(1) (such as section 1036), the U.S. transferor recognizes gain or loss realized on the transfer of such items of property, but the amount of loss recognized on the property shall not exceed the amount of gain recognized on the property. The Treasury Department and the IRS believe that permitting the recognition of losses to the extent of gains in such a case is consistent with the repeal of the *General Utilities* doctrine. See section 337(d). However, losses described in the prior sentence may be subject to other limitations, including, for example, section 267(f).

10. Other Clarifications and Modifications

The 2008 proposed regulations provide for various determinations to be made ''at the time of the section 361 exchange,'' and therefore do not take into account the possibility that the property of the U.S. transferor may not be transferred on a single date to the foreign acquiring corporation. Accordingly, the final regulations no longer use the phrase ''at the time of the section 361 exchange'' as the time for making certain determinations required under the regulations. For example, under the final regulations the determination as to whether the control requirement is satisfied is instead made immediately before the reorganization.

Under the final regulations, the computation of a shareholder's ownership interest percentage in the U.S. transferor for purposes of various calculations also generally must be made immediately before the reorganization. However, the final regulations further revise the computation of the ownership interest percentage to take into account certain distributions by the U.S. transferor of a portion of its property. Specifically, under the final regulations, the ownership interest percentage is determined after taking into account any distribution by the U.S. transferor of money or other property not received from the foreign acquiring corporation in exchange for property of the U.S. transferor acquired in the section 361 exchange.

The final regulations remove references in the 2008 proposed regulations to stock that is deemed received because references to stock received necessarily include stock that is deemed received. No substantive change is intended by the removal of references to stock that is deemed received. Similarly, in describing a control group member's stock basis adjustments, the final regulations remove references to blocks of stock because such references are not necessary to the determination of which basis in stock is reduced. No substantive change is intended by this modification.

The 2008 proposed regulations contain a reasonable cause relief provision in § 1.367(a)–7(e)(2), pursuant to which a control group member's failure to timely comply with any requirement of § 1.367(a)–7 will be deemed not to have occurred if the failure was due to reasonable cause and not willful neglect. The reasonable cause relief provision includes a provision that the control group member will be deemed to have established that the failure to comply was due to reasonable cause and not willful neglect if the control group member requesting relief is not notified by the IRS within 120 days of IRS acknowledgement of receipt of the request. As discussed in the preamble to temporary regulation published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS believe it is appropriate to eliminate the 120-day provision from the reasonable cause relief provision of § 1.367(a)–7(e)(2). Other than the elimination of the 120-day provision, the reasonable cause relief provision is retained in the temporary regulations.

Other modifications to § 1.367(a)–7 are generally intended to coordinate the rules with other provisions, such as §§ 1.367(a)–3T(e), 1.367(b)–4, 1.1248(f)–1, and 1.1248(f)–2, when the property transferred in the section 361 exchange is stock or securities.

B. Other Regulations Under Section 367(a)

The 2008 proposed regulations would modify § 1.367(a)–1T(b)(4)(i)(B) to provide that an increase in basis under section 362 for gain recognized by the U.S. transferor under section 367(a) is allocated among the transferred property with respect to which gain is recognized in proportion to the gain realized by the U.S. transferor.

The final regulations clarify this rule to provide that if gain is recognized under section 367 with respect to a particular item of property, the foreign transferee corporation increases its basis in that item of property for such gain. The final regulations further clarify that any gain recognized that is not with respect to a particular item of property (for example, gain recognized under the branch loss recapture rules) is then allocated in proportion to the gain realized by the U.S. transferor with respect to all items of property transferred, but for this purpose the gain realized is determined after taking into account gain recognized under other provisions of section 367 that apply with respect to particular items of property.

C. Regulations Under Section 367(b)

1. Modified Example 4 of § 1.367(b)–4(b)(1)

Final regulations issued under section 367(b) on January 24, 2000, provide that if a U.S. transferor that is a section 1248 shareholder of a foreign acquired corporation transfers the stock of such corporation to a foreign acquiring corporation in a section 361 exchange, the U.S. transferor must include in income the section 1248 amount attributable to the stock of the foreign acquired corporation. As part of the analysis, the final regulations state that immediately after the exchange, the U.S. transferor is not a section 1248 shareholder because the stock of the U.S. transferor is cancelled. This is the case even if the foreign acquiring corporation and the foreign acquired corporation are controlled foreign corporations (within the meaning of § 1.367(b)–2(a)). See § 1.367(b)–4(b)(1)(iii), *Example 4.* The 2008 proposed regulations would modify § 1.367(b)–4(b)(1)(iii), *Example 4,* to provide that the requirements in § 1.367(b)–4(b)(1)(i)(B) are applied immediately after the section 361 exchange (and before the distribution of the foreign stock under section 361(c)(1)).

One comment requested that the analysis in *Example 4,* as revised by the 2008 proposed regulations, be clarified to address the fact that the stock of the foreign corporation received in the transaction is immediately distributed by the U.S. transferor. That is, the comment questioned whether the analysis has the effect of respecting the transitory ownership of stock for purposes of applying § 1.367(b)–4. The comment further noted that Revenue Ruling 83–23 (1983–1 CB 82) disregards transitory ownership of stock for purposes of applying the section 367(b) regulations then in effect.

Unless otherwise provided, judicial doctrines and principles, such as substance-over-form and the step-transaction doctrine, apply in determining whether the conditions for an income inclusion under § 1.367(b)–4(b)(1) are satisfied, just as such principles and doctrines apply for purposes of determining the appropriate treatment of a transaction under any provision of section 367 (and more generally, section 1248). Thus, for example, an issuance of stock by the

foreign acquiring corporation in connection with the exchange being tested under § 1.367(b)–4 would be taken into account in determining whether an income inclusion under § 1.367(b)–4(b)(1) is required. Nevertheless, for purposes of applying § 1.367(b)–4(b)(1), the Treasury Department and the IRS believe it is appropriate to respect the ownership of stock by the U.S. transferor in the context of outbound section 361 exchanges (such as the transaction addressed in *Example 4*). This treatment is appropriate because the section 1248 amount in the stock of the foreign acquired corporation will, in the aggregate, either be preserved in the hands of certain domestic corporate shareholders of the U.S. transferor pursuant to § 1.1248(f)–2(c), or be included in the gross income of the U.S. transferor as a result of the distribution of such stock under section 361(c) pursuant to § 1.1248(f)–1(b)(3). Accordingly, the final regulations provide that in the case of an outbound transfer of stock of a foreign corporation in a section 361 exchange, the requirements of § 1.367(b)–4(b)(1)(ii)(B) apply after the section 361 exchange, but prior to and without taking into account the U.S. transferor's distribution under section 361(c)(1).

2. Other Modifications to § 1.367(b)–4

The final regulations modify § 1.367(b)–4(b)(1) by expanding the type of exchanges for which an income inclusion is not required to include a section 361 exchange of foreign stock by a foreign target that is itself acquired in a triangular asset reorganization involving stock of a domestic controlling (parent) corporation. Furthermore, the final regulations modify the format and organization of § 1.367(b)–4(a) and (b)(1) to clarify its application.

D. Section 1248(f) Regulations and Section 1.1248–8

1. Section 337 Distributions

The 2008 proposed regulations under section 1248(f) would provide exceptions to the operative rule of section 1248(f)(1) that requires a domestic corporation (distributing corporation) that distributes stock of certain foreign corporations under sections 337, 355(c)(1), or 361(c)(1) to include in income the section 1248 amount (if any) in the foreign stock distributed. Except in the case of a section 337 distribution, the exceptions apply only if an affirmative election is made (assuming the requirements for making the election are satisfied). The requirements for the election include making adjustments to the basis and holding period of the stock in the hands of the distributee to the extent necessary to preserve the section 1248 amount in the foreign stock in the hands of the distributee. In the case of a section 337 distribution, the exception applies if certain conditions are satisfied without the need to make adjustments to the basis or holding period of the distributed stock, which should generally be the case. However, the Treasury Department and the IRS believe that taxpayers should be permitted to elect to make any necessary basis and holding period adjustments to avoid a section 1248 inclusion for section 337 distributions. The final regulations are modified accordingly.

2. Section 361(c)(1) Distributions of Stock Involving Section 361 Exchanges

(a) Interaction With Regulations Under Section 367(a)

Application of the 2008 proposed regulations under section 1248(f), in combination with the 2008 proposed regulations under § 1.367(a)–7, could in certain cases result in aggregate basis adjustments and gain recognition (or deemed dividend inclusions) that exceed the built-in gain in the property transferred by the U.S. transferor in the section 361 exchange. The final regulations are modified to address this result.

(b) Allocation of Section 358 Basis to Portions of a Share

If in a section 361 exchange the U.S. transferor transfers property, other than a single block of stock of a foreign corporation with respect to which the U.S. transferor is a section 1248 shareholder, each share of stock of the foreign distributed corporation is required to be divided into portions. The 2008 proposed regulations would provide that for purposes of computing basis in a portion of a share of stock of the foreign distributed corporation, the distributee section 1248 shareholder's section 358 basis in that share is allocated to a portion of a share pro rata based on the fair market value of the property to which the portion relates relative to the aggregate fair market value of all property received by the foreign distributed corporation.

The final regulations modify this rule, providing that the distributee's section 358 basis in a share of the distributed foreign corporation is allocated to a portion of a share pro rata based on the basis of the property to which the portion relates relative to the aggregate basis of all property received by the foreign distributed corporation. As a result of this modification, the aggregate built-in gain in the respective portion of all shares to which a block of foreign stock transferred with a section 1248 amount relates will more closely match the built-in gain in such foreign stock transferred. Because the section 1248 amount is limited to the built-in gain in the stock, the modification will minimize basis reductions to portions of shares that may otherwise be required to preserve the section 1248 amount in foreign stock transferred.

(c) Preservation of the Section 1248(f) Amount

The 2008 proposed regulations would provide that if the section 1248(f) amount attributable to a portion of a share of stock (including a whole share, if appropriate) of the foreign distributed corporation received by a distributee section 1248 shareholder in the distribution exceeds the distributee section 1248 shareholder's postdistribution amount in the portion (excess amount), then the distributee section 1248 shareholder's section 358 basis in the portion is reduced by the excess amount.

The final regulations modify the 2008 proposed regulations to provide that the section 358 basis in the portion is not reduced below zero, and therefore to the extent the excess amount exceeds the section 358 basis in the portion, the domestic distributing corporation must include that portion of the section 1248(f) amount attributable to the portion of the share in gross income as a dividend. The excess amount can exceed the section 358 basis in the portion, for example, where the section 1248(f) amount attributable to the control group member exceeds the inside gain attributable to the control group member.

The Treasury Department and the IRS considered whether a distributee required to decrease basis in a portion of a share should be allowed to increase the basis in another portion of the same share or in another share (or portion thereof). Due to additional complexities that would arise from such rules, such as ensuring that the basis increase does not decrease the section 1248(f) amount in another portion or create (or increase) a built-in loss in another portion, the Treasury Department and the IRS decline to provide such rules. However, the modification made by the final regulations providing that the section 358 basis in a share of stock is allocated among portions of such share of stock based on the basis (rather than the fair market value) of the property transferred to the foreign distributed corporation in the section 361 exchange will, in many

cases, minimize the amount of basis decreases.

(d) Multiple Classes of Stock

The 2008 proposed regulations did not provide rules for situations in which multiple classes of stock of the foreign distributed corporation are received. The final regulations provide that if multiple classes of stock are received by a control group member, the section 1248(f) amount ''traced'' to such control group member is attributed to a share (or portion of a share) of stock received by the control group member based on the ratio of the fair market value of such share to the fair market value of all shares received by the control group member. Furthermore, the final regulations make consistent modifications to the regulations under § 1.1248–8 (concerning the attribution of section 1248 earnings and profits of stock of a foreign corporation transferred in a section 361 exchange to a share or portion of a share of stock of the foreign distributed corporation received by a section 1248 shareholder).

3. Other Modifications to the Section 1248(f) Regulations

The final regulations clarify that if the domestic distributing corporation distributes stock of the foreign distributed corporation that it did not receive in a section 361 exchange (existing stock) in addition to stock of the foreign distributed corporation that it did receive in the section 361 exchange (new stock), then certain rules apply to the existing stock and another set of rules apply to the new stock. This could occur, for example, if the domestic distributing corporation owns an existing foreign subsidiary and as part of the plan that includes a distribution of that stock that qualifies under section 355, the domestic distributing corporation contributes additional property to the foreign subsidiary in exchange for additional stock of the foreign subsidiary.

The final regulations refer to a distribution of stock that is not received in a section 361 exchange as an ''existing stock distribution,'' and a distribution of stock received in a section 361 exchange as a ''new stock distribution.''

The 2008 proposed regulations contain a reasonable cause relief provision in § 1.1248(f)–3, pursuant to which a reporting person's failure to timely comply with any requirement of § 1.1248(f)–2 will be deemed not to have occurred if the failure was due to reasonable cause and not willful neglect. The reasonable cause relief provision includes a provision that the reporting person will be deemed to have established that the failure to comply was due to reasonable cause and not willful neglect if the control group member requesting relief is not notified by the IRS within 120 days of IRS acknowledgement of receipt of the request. As discussed in the preamble to temporary regulation published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS believe it is appropriate to eliminate the 120-day provision from the reasonable cause relief provision of § 1.1248(f)–3. Other than the elimination of the 120-day provision, the reasonable cause relief provision is retained in the temporary regulations.

E. Definition of ''Sale or Exchange'' for Purposes of Section 1248

The 2008 proposed regulations amended § 1.1248–1(b) to clarify the definition of the term ''sale or exchange'' to include gain recognized under section 301(c)(3). No changes to § 1.1248–1(b) are included as part of these final regulations because after issuance of the 2008 proposed regulations a temporary regulation was issued that included this amendment. See § 1.1248–1T(b), issued in TD 9444 (February 10, 2009), and changes finalized by TD 9585 (April 24, 2012).

F. Regulations Under Section 6038B

The 2008 proposed regulations contain various reporting requirements. For example, the 2008 regulations under section 6038B describe how the U.S. transferor makes the election under § 1.367(a)–7(c), including requiring the U.S. transferor to file a statement containing specified information. The final regulations identify certain additional items of information that must be included with the statement making the election. The 2008 regulations also require the U.S. transferor to file a statement agreeing to file an amended return in certain cases if the foreign acquiring corporation subsequently disposes of a significant amount of section 367(a) property acquired in the section 361 exchange. The final regulations modify the disposition rules to provide that certain dispositions of section 367(a) property are not dispositions for this purpose.

Finally, as discussed in the preamble to temporary regulation published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS believe it is appropriate to eliminate the 120-day provision from the reasonable cause relief procedures of § 1.6038B–1(f)(3). Other than the elimination of the 120-day provision, the reasonable cause relief provision is retained in the temporary regulations.

G. Elimination of Coordination Rule Exception in § 1.367(a)–3(d)(2)(vi)(B)(1)(i)

Section 1.367(a)–3(d)(2)(vi)(A) (coordination rule) provides that if in connection with an indirect stock transfer, as defined in § 1.367(a)–3(d)(1), a U.S. person transfers assets to a foreign corporation (direct asset transfer) in an exchange described in sections 351 or 361, the rules of section 367 and the regulations under that section apply first to the direct asset transfer and then to the indirect stock transfer. However, the regulations provide two exceptions to the coordination rule for asset reorganizations to the extent the foreign acquiring corporation re-transfers the transferred assets to a controlled domestic corporation, but only if such domestic corporation's basis in the re-transferred assets is not greater than the U.S. transferor corporation's basis in the assets and the conditions in either paragraph § 1.367(a)–3(d)(2)(vi)(B)(*1*)(*i*) or (d)(2)(vi)(b)(*1*)(*ii*) are satisfied. The 2008 proposed regulations would modify the exceptions to the coordination rule exceptions, including clarifications described in Notice 2008–10 (2008–1 CB 277).

As discussed in the preamble to temporary regulations published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS believe it is appropriate to eliminate the coordination rule exception under § 1.367(a)–3(d)(2)(vi)(B)(*1*)(*i*). The coordination rule exception in § 1.367(a)–3(d)(2)(vi)(B)(*1*)(*ii*) is retained in the temporary regulations.

H. Effective/Applicability Dates

1. Regulations Under Sections 367(a) and 6038B

Section 1.367(a)–7 and the revisions to §§ 1.367(a)–1 and 1.6038B–1 apply to transfers occurring on or after April 18, 2013.

2. Regulations Under Sections 367(b) and 1248

The 2008 proposed regulations provide that the rules under sections 367(b) and 1248(f), including the modification to *Example 4* of § 1.367(b)–4(b)(1)(iii), apply to distributions or exchanges, respectively, occurring on or after the date that is 30 days after the date the regulations are published as final regulations in the **Federal Register**.

Comments requested that taxpayers be allowed to rely on the modifications to

Example 4 of § 1.367(b)–4(b)(1)(iii) and § 1.1248–8, and the regulations under section 1248(f) for all open tax years. Other comments requested that these regulations be effective on the date the regulations are published as final regulations in the **Federal Register**, rather than 30 days after such date.

The Treasury Department and the IRS do not believe that taxpayers should be able to rely on the modifications to *Example 4* of § 1.367(b)–4(b)(1)(iii) and § 1.1248–8, and the regulations under section 1248(f) prior to the effective date. Taxpayers must apply section 1248(f), which does not include the exceptions provided in § 1.1248(f)–2 for such prior periods. Accordingly, distributions described in section 1248(f)(1) during such period result in an inclusion unless the exception described in section 1248(f)(2) applies. Similarly, taxpayers must take into account *Example 4* of § 1.367(b)–4(b)(1)(iii) (before amendment by these final regulations) for such prior periods. The Treasury Department and the IRS also believe, because the regulations under sections 367(b) and 1248(f) operate together with the rules of § 1.367(a)–7, the provisions should be subject to consistent effective dates. Therefore, the final regulations retain the 30-day delay in the effective date for these rules.

Modifications to § 1.1248–6 apply to a sale, exchange, or other disposition of the stock of a domestic corporation on or after September 21, 1987.

Subject to rules implementing the effective dates announced in Notice 87–64 (1987–2 CB 375), the final regulations under section 1248(f) are applicable as of the date that is 30 days following the issuance of the final regulations.

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Effect on Other Documents

The following publication is obsolete as of April 18, 2013:

Notice 87–64 (1987–2 CB 375).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) apply to these regulations.

It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect large domestic corporations that transfer property to a foreign corporation in certain corporate reorganizations. Thus, the number of affected small entities will not be substantial. Small domestic corporations could be shareholders of a larger domestic corporation involved in a transaction subject to the regulations, and the small domestic corporations could be required to make certain adjustments to basis and holding period under the regulations. However, the exceptions requiring the adjustments are elective and, moreover, the Treasury Department and the IRS do not anticipate the number of these shareholders to be substantial. Furthermore, the Treasury Department and the IRS estimate that any small entities that are affected by the regulations will likely face a burden of approximately ten hours (at an hourly rate of $200) from the adjustments made to the basis of the stock received in the reorganization. Considering that the collections of information enable taxpayers to defer or avoid the recognition of potentially large amounts of gain, the Treasury Department and the IRS believe that $2,000 is not a significant economic impact. Pursuant to section 7805(f), the notice of proposed rule making preceding this regulation was submitted to the Administrator of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Robert B. Williams, Jr. of the Office of Associate Chief Counsel (International) and Sean W. Mullaney, formerly of the Office of Associate Chief Counsel (International); however, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.367(a)–1 also issued under 26 U.S.C. 367(a).

Section 1.367(a)–1T also issued under 26 U.S.C. 367(a).

Section 1.367(a)–3 also issued under 26 U.S.C. 367(a).

Section 1.367(a)–7 also issued under 26 U.S.C. 367(a), (b), (c), and 337(d).

Section 1.367(a)–8 also issued under 26 U.S.C. 367(a).

Section 1.367(b)–0 also issued under 26 U.S.C. 367(b).

Section 1.367(b)–4(b)(1) also issued under 26 U.S.C. 367(b).

Section 1.367(b)–6 also issued under 26 U.S.C. 367(b).

Section 1.367(e)–1(a) also issued under 26 U.S.C. 367(e).

Section 1.1248–1 also issued under 26 U.S.C. 1248(a)

Section 1.1248–6 also issued under 26 U.S.C. 1248(e).

Section 1.1248–8(b)(2)(iv) also issued under 26 U.S.C. 367(b), 1248(a), (c), and (f).

Section 1.1248(f)–1 also issued under 26 U.S.C. 367(b) and 1248(f).

Section 1.1248(f)–2 also issued under 26 U.S.C. 367(b) and 1248(f).

Section 1.1248(f)–3 also issued under 26 U.S.C. 367(b) and 1248(f).

Section 1.6038B–1 also issued under 26 U.S.C. 6038B.

■ **Par. 2.** Section 1.367(a)–1 is amended by:

■ 1. Adding paragraphs (b)(4)(i)(B) and (C).

■ 2. Adding paragraph (g)(4).

The additions read as follows:

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

(a) through (b)(4)(i)(A) [Reserved]. For further guidance see § 1.367(a)–1T(a) through (b)(4)(i)(A).

(B) Appropriate adjustments to earnings and profits, basis, and other affected items will be made according to otherwise applicable rules, taking into account the gain recognized under section 367(a)(1). For purposes of applying section 362, the foreign corporation's basis in the property received is increased by the amount of gain recognized by the U.S. transferor under section 367(a) and the regulations issued pursuant to that section. To the extent the regulations provide that the U.S. transferor recognizes gain with

respect to a particular item of property, the foreign corporation increases its basis in that item of property by the amount of such gain recognized. For example, §§ 1.367(a)–3, 1.367(a)–4T, and 1.367(a)–5T provide that gain is recognized with respect to particular items of property. To the extent the regulations do not provide that gain recognized by the U.S. transferor is with respect to a particular item of property, such gain is treated as recognized with respect to items of property subject to section 367(a) in proportion to the U.S. transferor's gain realized in such property, after taking into account gain recognized with respect to particular items of property transferred under any other provision of section 367(a). For example, § 1.367(a)–6T provides that branch losses must be recaptured by the recognition of gain realized on the transfer but does not associate the gain with particular items of property. See also § 1.367(a)–1T(c)(3) for rules concerning transfers by partnerships or of partnership interests.

(C) The transfer will not be recharacterized for U.S. Federal tax purposes solely because the U.S. person recognizes gain in connection with the transfer under section 367(a)(1). For example, if a U.S. person transfers appreciated stock or securities to a foreign corporation in an exchange described in section 351, the transfer is not recharacterized as other than an exchange described in section 351 solely because the U.S. person recognizes gain in the transfer under section 367(a)(1).

(b)(4)(ii) through (d)(2) [Reserved]. For further guidance see § 1.367(a)–1T(b)(4)(ii) through (d)(2).

* * * * *

(d)(4) through (g)(3) [Reserved]. For further guidance see § 1.367(a)–1T(d)(4) through (g)(3).

(4) The rules in paragraphs (b)(4)(i)(B) and (b)(4)(i)(C) of this section apply to transfers occurring on or after April 18, 2013. For guidance with respect to paragraph (b)(4)(i)(B) of this section before April 18, 2013, see 26 CFR part 1 revised as of April 1, 2012.

■ **Par. 3.** Section 1.367(a)–1T is amended by revising paragraph (b)(4)(i)(B) and adding paragraphs (b)(4)(i)(C) and (g)(4) to read as follows:

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (temporary).

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) [Reserved]. For further guidance see § 1.367(a)–1(b)(4)(i)(B).

(C) [Reserved]. For further guidance see § 1.367(a)–1(b)(4)(i)(C).

* * * * *

(g) * * *

(4) [Reserved]. For further guidance see § 1.367(a)–1(g)(4).

■ **Par. 4.** Section 1.367(a)–3 is amended by:

■ 1. Revising the second sentence of paragraph (a)(3).

■ 2. Revising paragraphs (b)(1) and (c)(1).

■ 3. Adding a sentence at the end of paragraph (d)(2)(vi)(D)(*2*).

■ 4. Revising paragraph (d)(3), *Example 6A* (ii).

■ 5. Adding a sentence between the second and third sentences of paragraph (d)(3), *Example 8* (ii).

■ 6. Revising the first sentence of paragraph (d)(3), *Example 8B* (ii).

■ 7. Revising the first sentence of paragraph (d)(3), *Example 8C* (ii).

■ 8. Revising the third sentence of paragraph (d)(3), *Example 10* (ii).

■ 9. Revising paragraph (d)(3), *Example 11* (ii).

■ 10. Revising the second and third sentences of paragraph (d)(3), *Example 12* (ii), and removing the last sentence.

■ 11. Revising paragraph (d)(3), *Example 16* (ii).

■ 12. Revising the paragraph (g) subject heading.

■ 13. Revising paragraph (g)(1)(v)(A) and (B).

The revisions and additions to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) * * *

(3) * * * For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see § 1.367(a)–7. * * *

(b) *Transfers of stock or securities of foreign corporations* —(1) *General rule.* Except as provided in paragraph (e) of this section, a transfer of stock or securities of a foreign corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section will not be subject to section 367(a)(1) if either—

* * * * *

(c) *Transfers of stock or securities of domestic corporations*—(1) *General rule.* Except as provided in paragraph (e) of this section, a transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section will not be subject to section 367(a)(1) if the domestic corporation the stock or securities of which are transferred (referred to as the U.S. target company) complies with the reporting requirements in paragraph (c)(6) of this section and if each of the following four conditions is met:

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(D) * * *

(*2*) * * * For this purpose, a disposition by the foreign acquiring corporation of stock of the domestic controlled corporation more than 5 years after completion of the transfer described in paragraph (d)(2)(vi)(A) of this section is deemed to not have a principal purpose of tax avoidance.

* * * * *

(3) * * *

Example 6A. * * *

(ii) *Result.* The transfer of the Business A assets by Z to F does not constitute an indirect stock transfer under paragraph (d) of this section, and, subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business A assets qualify for the section 367(a)(3) active trade or business exception and are not subject to section 367(a)(1). The transfer of the Business B and C assets by Z to F must first be tested under sections 367(a)(1), (a)(3), and (a)(5). Z recognizes $20 of gain on the outbound transfer of the Business C assets, as those assets do not qualify for an exception to section 367(a)(1). Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B assets qualify for the active trade or business exception under section 367(a)(3). Pursuant to paragraphs (d)(1) and (d)(2)(vii)(A)(*2*) of this section, V is deemed to transfer the stock of a foreign corporation to F in a section 354 exchange subject to the rules of paragraphs (b) and (d) of this section. V must enter into the gain recognition agreement in the amount of $30 to preserve Z's nonrecognition treatment with respect to its transfer of Business B assets. Under paragraphs (d)(2)(i) and (d)(2)(ii) of this section, F is the transferee foreign corporation and R is the transferred corporation.

* * * * *

Example 8. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B assets qualify for the active trade or business exception under section 367(a)(3). * * *

* * * * *

Example 8B. * * *

(ii) * * * Under section 367(a)(5) and § 1.367(a)–7(b), the active trade or business exception under section 367(a)(3) does not apply to Z's transfer of assets to R. * * *

Example 8C. * * *

(ii) * * * Under section 367(a)(5) and § 1.367(a)–7(b), the active trade or business exception under section 367(a)(3) does not apply to Z's transfer of assets to R. * * *

* * * * *

Example 10. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B assets qualify

for the active trade or business exception under section 367(a)(3). * * *

Example 11. * * *

(ii) *Result.* Under paragraph (d)(1)(ii) of this section, V is treated as indirectly transferring Z stock to F. V must recognize gain on its indirect transfer of Z stock to F under section 367(a) (and section 1248 will be applicable) if V does not enter into a gain recognition agreement with respect to the indirect stock transfer in accordance with § 1.367(a)–8. Under paragraph (b)(2) of this section, if V enters into a gain recognition agreement with respect to the indirect stock transfer, the exchange will be subject to the provisions of section 367(b) and the regulations pursuant to such section as well as section 367(a). Under § 1.367(b)–4(b), however, no income inclusion is required because, immediately after the exchange, F and Z are controlled foreign corporations with respect to which V is a section 1248 shareholder. Under paragraphs (d)(2)(i) and (d)(2)(ii) of this section, the transferee foreign corporation is F, and the transferred corporation is Z (the acquiring corporation). If F disposes (within the meaning of § 1.367(a)–8(j)(1)) of all (or a portion) of Z stock within the term of the gain recognition agreement, V must either file an amended return for the year of the indirect stock transfer and include in income, with interest, the gain realized but not recognized on the initial exchange or if a valid election under § 1.367(a)–8(c)(2)(vi) was made, currently recognize the gain and pay the related interest. Under paragraph (d)(2)(v)(B) of this section, to determine whether, for purposes of the gain recognition agreement, Z (the transferred corporation) disposes of substantially all of its assets, only the assets held by Z immediately before the transaction are taken into account. Because D is wholly owned by F, a foreign corporation, the control requirement of section 367(a)(5) and § 1.367(a)–7(c)(1) cannot be satisfied. Therefore, section 367(a)(5) and § 1.367(a)–7(b) preclude the application of the active trade or business exception under section 367(a)(3) to any property transferred by D to Z. Thus, under section 367(a)(1), D must recognize the gross amount of gain in each asset transferred to Z, or $40.

Example 12. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the active trade or business exception under section 367(a)(3) applies to E's transfer of Business X assets. E's transfer of its N stock could qualify for nonrecognition treatment if D satisfies the requirements in § 1.367(a)–3T(e)(3). * * *

* * * * *

Example 16. * * *

(ii) *Result.* The section 368(a)(1)(D) reorganization is not an indirect stock transfer described in paragraph (d) of this section. Moreover, the section 354 exchange by D of F1 stock for F2 stock is not an exchange described under section 367(a). See paragraph (a)(2)(ii) of this section.

* * * * *

(g) *Effective/applicability dates.*

(1) * * *

(v) * * *

(A) Except as provided in paragraphs (g)(1)(v)(B) of this section and § 1.367(a)–3T(g)(1)(ix), the rules of paragraph (d)(2)(vi) of this section apply only to transactions occurring on or after January 23, 2006. See § 1.367(a)–3(d)(2)(vi), as contained in 26 CFR part 1 revised as of April 1, 2005, for transactions occurring on or after July 20, 1998, and before January 23, 2006.

(B)(*1*) For purposes of paragraph (d)(2)(vi)(B)(*1*) of this section as contained in 26 CFR part 1 revised as of April 1, 2007, except as provided in paragraph (g)(1)(v)(B)(*3*) of this section, the following conditions must be satisfied for transactions occurring on or after December 28, 2007, and before March 18, 2013: The conditions and requirements of section 367(a)(5) and paragraph (g)(1)(v)(B)(*2*) of this section must be satisfied with respect to the domestic acquired corporation's transfer of assets to the foreign acquiring corporation and those conditions and requirements apply before the application of the exception under paragraph (d)(2)(vi)(B)(*1*) of this section as contained in 26 CFR part 1 revised as of April 1, 2007.

(*2*) The domestic acquired corporation is controlled (within the meaning of section 368(c)) by five or fewer (but at least one) domestic corporations (controlling domestic corporations) immediately before the reorganization, appropriate basis adjustments under section 367(a)(5) are made to the stock received by the controlling domestic corporations in the reorganization, and any other conditions as provided in regulations under section 367(a)(5) are satisfied. For purposes of determining whether the domestic acquired corporation is controlled by five or fewer domestic corporations, all members of the same affiliated group within the meaning of section 1504 are treated as one corporation. Any adjustments to stock basis required under section 367(a)(5) must be made to the stock received by the controlling domestic corporation in the reorganization so the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange is reflected in the stock received. The basis adjustment requirement cannot be satisfied by adjusting the basis in stock of the foreign acquiring corporation held by the controlling domestic corporation before the reorganization. To the extent the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange cannot be preserved in the stock received by the controlling domestic corporation in the reorganization, the domestic acquired corporation's transfer of property to the foreign acquiring corporation is subject to section 367(a) and (d).

(*3*) For transactions occurring on or after August 19, 2008, and before March 18, 2013, the following condition also applies: To the extent any of the re-transferred assets constitute property to which section 367(d) applies, the exception under paragraph (d)(2)(iv)(B)(*1*) of this section, as contained in 26 CFR part 1 revised as of April 1, 2007, applies only if the property to which section 367(d) applies is treated as property subject to section 367(a) for purposes of satisfying the conditions and requirements of section 367(a)(5).

* * * * *

■ **Par. 5.** Section 1.367(a)–7 is added to read as follows:

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

(a) *Scope and purpose.* This section provides rules under section 367(a)(5) that apply to the transfer of certain property (including stock or securities) by a domestic corporation (U.S. transferor) to a foreign corporation (foreign acquiring corporation) in a section 361 exchange. This section applies only to the transfer of section 367(a) property. See section 367(d) for rules applicable to transfers of section 367(d) property. Paragraph (b) of this section provides the general rule requiring the recognition of gain on the transfer of section 367(a) property, while paragraph (c) of this section provides an elective exception to the general rule that is available if certain requirements are satisfied. Paragraph (d) of this section provides rules for applying the elective exception to a section 361 exchange followed by successive distributions to which section 355 applies. Paragraph (e) of this section provides rules for recognizing gain on section 367(a) property, reasonable cause relief provisions, an anti-abuse rule, and special rules that take into account income inclusions under § 1.367(b)–4 and gain recognition under § 1.367(a)–6T. Paragraph (f) of this section provides definitions, and paragraph (g) of this section provides examples. Paragraph (h) of this section provides applicable cross-references, paragraph (i) of this section is reserved, and paragraph (j) of this section provides effective/applicability dates.

(b) *General rule*—(1) *Nonrecognition exchanges enumerated in section 367(a)(1).* Except to the extent provided in paragraphs (b)(2) and (c) of this

section, the exceptions to section 367(a)(1) provided in section 367(a) and the regulations under that section do not apply to a transfer of section 367(a) property by a U.S. transferor to a foreign acquiring corporation in a section 361 exchange, and the U.S. transferor shall recognize any gain (but not loss) realized with respect to the section 367(a) property under section 367(a)(1). Realized gain is recognized pursuant to the prior sentence notwithstanding the application of any other nonrecognition provision enumerated in section 367(a)(1) to the transfer (such as section 351 or 354).

(2) *Nonrecognition exchanges not enumerated in section 367(a)(1).* To the extent a transfer of items of property described in paragraph (b)(1) of this section also qualifies for nonrecognition under a provision that is not enumerated in section 367(a)(1) (such as section 1036), the U.S. transferor recognizes gain or loss realized on the transfer of such items of property, but the amount of loss recognized on the property shall not exceed the amount of gain recognized on the property. See section 337(d).

(c) *Elective exception.* Except to the extent provided in paragraph (d) of this section, paragraph (b) of this section does not apply to the transfer of section 367(a) property by a U.S. transferor to a foreign acquiring corporation in a section 361 exchange if the conditions of paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section are satisfied, and an election to apply the exception provided by this paragraph (c) is made in the manner provided by paragraph (c)(5) of this section. If this paragraph (c) applies to the section 361 exchange, see, for example, §§ 1.367(a)–2T, 1.367(a)–3T, 1.367(a)–4T, 1.367(a)–5T, or 1.367(a)–6T, as applicable, for additional requirements that must be satisfied in order for the U.S. transferor to not recognize gain under section 367(a)(1) on the transfer of section 367(a) property in the section 361 exchange. Nothing in this section provides for the nonrecognition of gain not otherwise permitted under another provision of the Internal Revenue Code (Code) or the regulations.

(1) *Control.* Immediately before the reorganization, the U.S. transferor is controlled (within the meaning of section 368(c)) by five or fewer, but at least one, control group members. For illustrations of this rule, see paragraph (g) of this section, *Example 4* and *Example 5.*

(2) *Gain recognition*—(i) *Non-control group members.* The U.S. transferor recognizes gain equal to the product of the inside gain multiplied by the aggregate ownership interest percentage of all non-control group members, reduced (but not below zero) by the sum of the amounts described in paragraphs (c)(2)(i)(A), (c)(2)(i)(B), and (c)(2)(i)(C) of this section.

(A) Gain recognized with respect to stock or securities under § 1.367(a)–3T(e)(3)(iii)(B) (including any portion treated as a deemed dividend under section 1248(a));

(B) Gain recognized with respect to stock or securities under § 1.367(a)–6T (including any portion treated as a deemed dividend under section 1248(a)) attributable to non-control group members (as determined pursuant to § 1.367(a)–7(e)(5)); and

(C) A deemed dividend included in income under § 1.367(b)–4 attributable to non-control group members (as determined pursuant to § 1.367(a)–7(e)(4)).

(ii) *Control group members.* With respect to each control group member, the U.S. transferor recognizes gain equal to the amount, if any, by which the amount described in paragraph (c)(2)(ii)(A) of this section exceeds the amount described in paragraph (c)(2)(ii)(B) of this section.

(A) The product of the inside gain multiplied by such control group member's ownership interest percentage, reduced (but not below zero) by the sum of the amounts described in paragraphs (c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), and (c)(2)(ii)(A)(*3*) of this section (attributable inside gain).

(*1*) Gain recognized with respect to stock or securities under § 1.367(a)–3T(e)(3)(iii)(C) (including any portion treated as a deemed dividend under section 1248(a)) attributable to the control group member;

(*2*) Gain recognized with respect to stock or securities under § 1.367(a)–6T (including any portion treated as a deemed dividend under section 1248(a)) attributable to the control group member (as determined pursuant to § 1.367(a)–7(e)(5)); and

(*3*) A deemed dividend included in income under § 1.367(b)–4 attributable to the control group member (as determined pursuant to § 1.367(a)–7(e)(4)).

(B) The product of the section 367(a) percentage multiplied by the fair market value of the stock received by the U.S. transferor in the section 361 exchange and distributed to the control group member under section 354, 355, or 356.

(iii) *Illustration of rules.* For an illustration of gain recognition under paragraph (c)(2)(i) of this section, see paragraph (g) of this section, *Example 1.* For an illustration of gain recognition under paragraph (c)(2)(ii) of this section, see paragraph (g) of this section, *Example 2.*

(3) *Basis adjustments required for control group members*—(i) *General rule.* Except as provided in paragraph (c)(3)(iv) of this section, if there is any attributable inside gain (determined under paragraph (c)(2)(ii)(A) of this section) with respect to a control group member, then such control group member's aggregate basis in the stock received in exchange for (or with respect to, as applicable) stock or securities of the U.S. transferor under section 354, 355, or 356, as determined under section 358 and the regulations under that section (section 358 basis), is reduced by the amount in paragraph (c)(3)(i)(A), (c)(3)(i)(B), or (c)(3)(i)(C) of this section, as applicable.

(A) If the control group member has outside gain, the amount, if any, by which the attributable inside gain, reduced by any gain recognized by the U.S. transferor with respect to the control group member under paragraph (c)(2)(ii) of this section, exceeds the control group member's outside gain.

(B) If the control group member has outside loss, the amount, if any, by which the attributable inside gain, reduced by any gain recognized by the U.S. transferor with respect to the control group member under paragraph (c)(2)(ii) of this section, exceeds the control group member's outside loss (for this purpose, treating the outside loss as a negative amount).

(C) If the control group member has no outside gain or outside loss, the amount of the attributable inside gain, reduced by any gain recognized by the U.S. transferor with respect to the control group member under paragraph (c)(2)(ii) of this section.

(ii) *Stock received in the section 361 exchange.* This paragraph (c)(3) applies only to stock received by the U.S. transferor in the section 361 exchange and distributed to the control group member in exchange for (or with respect to, as applicable) stock or securities of the U.S. transferor.

(iii) *Pro rata adjustments.* The section 358 basis of each share of stock received by the control group member must be reduced pro rata based on the relative section 358 basis of all shares of stock received by the control group member.

(iv) *Successive distributions to which section 355 applies.* Paragraph (c)(3) of this section does not apply to a control group member that distributes the stock of a foreign acquiring corporation received from the U.S. transferor in a distribution satisfying the requirements of section 355 (section 355 distribution) that is in connection with a transaction described in paragraph (d) of this

section (relating to successive section 355 distributions). If paragraph (c)(3) of this section does not apply to a control group member pursuant to this paragraph (c)(3)(iv), then paragraph (c)(3) of this section shall apply to the final distributee (as defined in paragraph (d) of this section) that receives the stock of the foreign acquiring corporation in the final section 355 distribution described in paragraph (d) of this section.

(v) *Illustration of rules.* For illustrations of the adjustment to stock basis under paragraph (c)(3)(i) of this section, see paragraph (g) of this section, *Example 1* and *Example 2,* § 1.367(a)–3T(e)(8), *Example 3,* and § 1.1248(f)–2(e), *Example 3.* For an illustration of the adjustment to stock basis under paragraph (c)(3)(iii) of this section, see paragraph (g) of this section, *Example 3.*

(4) *Agreement to amend or file a U.S. income tax return*—(i) *General rule.* Except as provided in paragraph (c)(4)(ii) of this section, the U.S. transferor complies with the requirements of § 1.6038B–1(c)(6)(iii), relating to the requirement to report gain that was not recognized by the U.S. transferor upon certain subsequent dispositions by the foreign acquiring corporation of section 367(a) property received from the U.S. transferor in the section 361 exchange.

(ii) *Exception.* To the extent section 367(a) property transferred in the section 361 exchange is subject to § 1.367(a)–3T(e) (relating to transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange), § 1.6038B–1(c)(6)(iii) does not apply with respect to the transfer of that property.

(5) *Election and reporting requirements*—(i) *General rule.* The U.S. transferor and each control group member elect to apply the provisions of paragraph (c) of this section in the manner provided under paragraph (c)(5)(ii) or (c)(5)(iii) of this section, as applicable, and by entering into a written agreement described in paragraph (c)(5)(iv) of this section. If a control group member distributes the stock of the foreign acquiring corporation received from the U.S. transferor in a section 355 distribution that is in connection with a transaction described in paragraph (d) of this section, the final distributee that receives that stock in the final section 355 distribution elects to apply the provisions of this paragraph (c) and enters into the written agreement instead of the control group member. For this purpose, the term *control group member* will be replaced by the term *final distributee,* as appropriate.

(ii) *Control group member*—(A) *Time and manner of making election.* Each control group member elects to apply the provisions of paragraph (c) of this section by including a statement (in the form and with the content specified in paragraph (c)(5)(ii)(B) of this section) on or with a timely filed return for the taxable year in which the reorganization occurs. If the control group member is a member of a consolidated group but is not the common parent of the consolidated group, the common parent makes the election on behalf of the control group member.

(B) *Form and content of election statement.* The statement must be entitled, ''ELECTION TO APPLY EXCEPTION UNDER § 1.367(a)–7(c),'' and set forth:

(*1*) The name and taxpayer identification number (if any) of the control group member, the U.S. transferor, the foreign acquiring corporation and, in the case of a triangular reorganization (within the meaning of § 1.358–6(b)(2)), the corporation that controls the foreign acquiring corporation; the control group member's ownership interest percentage in the U.S. transferor; and the percentage of voting stock and non-voting stock of the U.S. transferor owned by the control group member for purposes of satisfying the control requirement of paragraph (c)(1) of this section;

(*2*) If the control group member is a member of a consolidated group but is not the common parent, the name and taxpayer identification number of the common parent;

(*3*) The amount of the adjustment (if any) to stock basis required under paragraph (c)(3) of this section, the resulting adjusted basis in the stock, and the fair market value of the stock, or if no stock was received, indicate no stock was received; and

(*4*) The date on which the written agreement described in paragraph (c)(5)(iv) of this section was entered into.

(iii) *Statement by U.S. transferor.* The U.S. transferor elects to apply the provisions of paragraph (c) of this section in the form and manner set forth in § 1.6038B–1(c)(6)(ii).

(iv) *Written agreement.* The U.S. transferor and each control group member must enter into a written agreement satisfying the conditions of this paragraph on or before the due date (including extensions) for the U.S. transferor's tax return for the taxable year in which the reorganization occurs. Each party to the agreement must retain the original or a copy of the agreement in the manner specified by § 1.6001–1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the copy of the agreement. The written agreement must—

(A) State the document constitutes an agreement entered into pursuant to paragraph (c)(5) of this section;

(B) Identify the U.S. transferor, the foreign acquiring corporation, the corporation that controls the foreign acquiring corporation (in the case of a triangular reorganization within the meaning of § 1.358–6(b)(2)), and each control group member, and provide the taxpayer identification number (if any) for each corporation;

(C) State the amount of gain (if any) recognized by the U.S. transferor under paragraph (c)(2) of this section; and

(D) With respect to each control group member, state the amount of the adjustment (if any) to stock basis required under paragraph (c)(3) of this section, the resulting adjusted basis in the stock, and the fair market value of the stock. Alternatively, if a control group member did not receive any stock, indicate that no stock was received.

(d) *Section 361 exchange followed by successive distributions to which section 355 applies.* If the U.S. transferor distributes stock of the foreign acquiring corporation received in the section 361 exchange to a control group member in a section 355 distribution and, as part of a plan or series of related transactions, that stock is further distributed in one or more successive section 355 distributions, paragraph (c) of this section can apply to the section 361 exchange only to the extent each subsequent section 355 distribution is to a member of the affiliated group (within the meaning of section 1504) that includes the U.S. transferor immediately before the reorganization. In that case, each affiliated group member that receives stock of the foreign acquiring corporation in the final section 355 distribution (final distributee) is subject to the requirements of paragraphs (c)(3) and (c)(5) of this section. If this paragraph (d) applies, then for purposes of applying paragraphs (c)(3), (c)(5) or (e)(2) of this section the term *control group member* is replaced by the term *final distributee,* as appropriate.

(e) *Other rules*—(1) *Section 367(a) property with respect to which gain is recognized.* Except as otherwise provided in this paragraph (e)(1), gain recognized by the U.S. transferor pursuant to paragraph (c)(2) of this section will be treated as recognized with respect to the section 367(a) property transferred in the section 361

exchange in proportion to the amount of gain realized by the U.S. transferor on the transfer of each item of section 367(a) property. This paragraph (e)(1) will be applied after taking into account any gain or deemed dividends (including any deemed dividends under section 1248(a)) recognized by the U.S. transferor on the transfer of the section 367(a) property in the section 361 exchange pursuant to all other provisions of sections 367(a) and (b) and the regulations under that section. See, for example, §§ 1.367(a)–2T, 1.367(a)–3T(e), 1.367(a)–4T, 1.367(a)–5T, 1.367(a)–6T, and 1.367(b)–4. If the U.S. transferor recognizes gain (including gain treated as a deemed dividend under section 1248(a)) pursuant to § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) with respect to stock or securities transferred in the section 361 exchange, the realized gain in such stock or securities shall not be taken into account for purposes of applying this paragraph (e)(1) to gain recognized under paragraph (c)(2) of this section attributable to U.S. transferor shareholders described in § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C). Accordingly, gain recognized under paragraph (c)(2) attributable to such U.S. transferor shareholders shall not be treated as recognized with respect to such stock or securities under this paragraph. Furthermore, to the extent gain recognized by the U.S. transferor under paragraph (c)(2) is treated as recognized with respect to stock in a foreign corporation transferred in the section 361 exchange to which section 1248(a) applies, the portion of such gain treated as a deemed dividend under section 1248(a) is the product of the amount of the gain multiplied by the ratio of the amount that would be treated as a deemed dividend under section 1248(a) if all gain in the transferred stock were recognized under § 1.367(a)–7(b) and the amount of gain realized in the transferred stock. See § 1.367(a)–1T(b)(4) and § 1.367(a)–1(b)(4)(i)(B) for additional rules on the character, source, and adjustments relating to gain recognized under section 367(a)(1), and § 1.367(b)–2(e) for rules on the timing, treatment, and effect of amounts included in income as deemed dividends pursuant to regulations under section 367(b).

(2) [Reserved]. For further guidance see § 1.367(a)–7T(e)(2).

(3) *Anti-abuse rule.* Any property of the U.S. transferor acquired with a principal purpose of affecting any determination under this section (including, for example, the section 367(a) percentage, inside gain, or inside basis) shall not be taken in account for purposes of any determination under this section. Nothing in this paragraph (e)(3) constitutes a limitation on or modification to judicial doctrines, including step-transaction or substance-over-form.

(4) *Certain income inclusions under § 1.367(b)–4*—(i) *Income inclusion attributable to U.S. transferor shareholder described in § 1.367(a)–3T(e)(3)(iii)(A).* If pursuant to § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) the U.S. transferor is required to recognize gain on the transfer of foreign stock (all or a portion of which is treated as a deemed dividend under section 1248(a)), and if pursuant to § 1.367(b)–4(b)(1)(i) the U.S. transferor is also required to include in income as a deemed dividend the section 1248 amount (within the meaning of § 1.367(b)–2(c)) in the foreign stock, then the section 1248 amount included in income under § 1.367(b)–4(b)(1)(i) is attributable to each U.S. transferor shareholder described in § 1.367(a)–3T(e)(3)(iii)(A) pursuant to this paragraph (e)(4)(i). The portion of the section 1248 amount attributable to each U.S. transferor shareholder described in § 1.367(a)–3T(e)(3)(iii)(A) is the portion of the section 1248 amount that bears the same ratio as such U.S. transferor shareholder's ownership interest percentage bears to the aggregate ownership interest percentage of all U.S. transferor shareholders described in § 1.367(a)–3T(e)(3)(iii)(A).

(ii) *Ordering rules for determining section 1248 amount.* The section 1248 amount (within the meaning of § 1.367(b)–2(c)) included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) is determined after taking into account any gain recognized under §§ 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) or 1.367(a)–6T that is treated as a deemed dividend under section 1248(a). See § 1.367(a)–3T(e)(7) and paragraph (e)(5)(ii) of this section for rules to determine the amount of gain recognized under §§ 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) or 1.367(a)–6T, respectively, that is treated as a deemed dividend under section 1248(a).

(5) *Certain gain under § 1.367(a)–6T*—(i) *Gain attributable to U.S. transferor shareholder described in § 1.367(a)–3T(e)(3)(iii)(A).* If pursuant to § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C), the U.S. transferor is required to recognize gain on the transfer of stock or securities, and if pursuant to § 1.367(a)–6T the U.S. transferor is also required to recognize gain, then gain recognized under § 1.367(a)–6T (including any portion treated as a deemed dividend under section 1248(a)) to the extent treated as recognized with respect to the stock or securities, is attributable to each U.S. transferor shareholder described in § 1.367(a)–3T(e)(3)(iii)(A) pursuant to this paragraph (e)(5)(i). The portion of the gain (including any portion treated as a deemed dividend under section 1248(a)) that is attributable to each U.S. transferor shareholder described in § 1.367(a)–3T(e)(3)(iii)(A) is the portion of the gain that bears the same ratio as such U.S. transferor shareholder's ownership interest percentage bears to the aggregate ownership interest percentage of all U.S. transferor shareholders described in § 1.367(a)–3T(e)(3)(iii)(A).

(ii) *Gain subject to section 1248(a).* If the U.S. transferor recognizes gain under § 1.367(a)–6T with respect to transferred stock that is stock in a foreign corporation to which section 1248(a) applies, the portion of such gain treated as a deemed dividend under section 1248(a) is determined after taking into account any gain recognized under § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) and the amount of such gain treated as a deemed dividend under section 1248(a) pursuant to § 1.367(a)–3T(e)(7).

(f) *Definitions.* The following definitions apply for purposes of this section:

(1) *Control group, control group member, and non-control group member*—(i) *General rule.* Except as provided in paragraph (f)(1)(ii) of this section, the *control group* is the group of five or fewer, but at least one, domestic corporations that controls (within the meaning of section 368(c)) the U.S. transferor immediately before the reorganization. If the U.S. transferor is owned directly by more than five domestic corporations immediately before the reorganization, but some combination of five or fewer domestic corporations controls the U.S. transferor, the U.S. transferor must designate the five or fewer domestic corporations that comprise the control group on Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation.'' For purposes of identifying the control group, members of an affiliated group (within the meaning of section 1504) are treated as a single corporation. Except as provided in paragraph (f)(1)(ii) of this section, a *control group member* is a domestic corporation that is part of the control group. A *non-control group member* is a shareholder of the U.S. transferor immediately before the reorganization that is not a control group member.

(ii) *Exception for certain entities.* Regulated investment companies (as defined in section 851(a)), real estate

investment trusts (as defined in section 856(a)), and S corporations (as defined in section 1361(a)) cannot be control group members.

(2) *Deductible liability* is any liability of the U.S. transferor that is assumed in the section 361 exchange if payment of the liability would give rise to a deduction.

(3) *Fair market value* is the fair market value determined without regard to mortgages, liens, pledges, or other liabilities. For this purpose, the fair market value of any property subject to a nonrecourse indebtedness shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(4) *Inside basis* is the aggregate basis of the section 367(a) property transferred by the U.S. transferor in the section 361 exchange and, except as otherwise provided in this paragraph (f)(4), increased by any gain recognized or any deemed dividend included in income by the U.S. transferor under section 367 on the transfer of the section 367(a) property in the section 361 exchange, but not including any gain recognized under paragraph (c)(2) of this section. If the U.S. transferor transfers stock or securities and recognizes gain under § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) with respect to such stock or securities, then inside basis is not increased for gain recognized or deemed dividends included in income that are described in paragraph (f)(4)(i), (f)(4)(ii), or (f)(4)(iii) of this section.

(i) Gain recognized under § 1.367(a)–3T(e)(3)(iii)(B) or (e)(3)(iii)(C) (including any portion treated as a deemed dividend under section 1248(a));

(ii) Gain recognized under § 1.367(a)–6T (including any portion treated as a deemed dividend under section 1248(a)) attributable to U.S. transferor shareholders described in § 1.367(a)–3T(e)(3)(iii)(A) (as determined pursuant to § 1.367(a)–7(e)(5));

(iii) A deemed dividend included in income under § 1.367(b)–4(b) attributable to U.S. transferor shareholders described in § 1.367(a)–3T(e)(3)(iii)(A) (as determined pursuant to § 1.367(a)–7(e)(4)).

(5) *Inside gain* is the amount (but not below zero) by which the aggregate fair market value of the section 367(a) property transferred in the section 361 exchange exceeds the sum of:

(i) The inside basis; and

(ii) The product of the section 367(a) percentage multiplied by the aggregate deductible liabilities of the U.S. transferor.

(6) *Outside gain or loss* is the product of the section 367(a) percentage multiplied by the difference between—

(i) The aggregate fair market value of the stock received by a control group member in exchange for (or with respect to, as applicable) stock or securities of the U.S. transferor under section 354, 355, or 356, and

(ii) The control group member's aggregate section 358 basis (as defined in paragraph (c)(3) of this section) in such stock received, determined without regard to any adjustment to that basis under paragraph (c)(3) of this section.

(7) *Ownership interest percentage* is the ratio of the fair market value of the stock in the U.S. transferor owned by a shareholder to the fair market value of all of the outstanding stock of the U.S. transferor. Except as provided in this paragraph (f)(7), the ownership interest percentage of a shareholder is determined immediately before the reorganization. For purposes of determining the ownership interest percentage with respect to each shareholder, however, the numerator and denominator of the fraction are first reduced as described in this paragraph (f)(7). The numerator is reduced (but not below zero) by any distributions by the U.S. transferor of money or other property (within the meaning of section 356) to such shareholder pursuant to the plan of reorganization, but only to the extent such money or other property is not provided by the foreign acquiring corporation in exchange for property of the U.S. transferor acquired in the section 361 exchange. Furthermore, the denominator of the fraction is reduced (but not below zero) by all such distributions by the U.S. transferor to all shareholders. For illustrations of this definition, see paragraph (g) of this section, *Example 4* and *Example 5.*

(8) *Section 361 exchange* is an exchange described in section 361(a) or (b).

(9) *Section 367(a) percentage* is the ratio of the aggregate fair market value of the section 367(a) property transferred by the U.S. transferor in the section 361 exchange to the aggregate fair market value of all property transferred by the U.S. transferor in the section 361 exchange.

(10) *Section 367(a) property.* Except as provided in paragraph (e)(3) of this section, *section 367(a) property* is any property, as defined in § 1.367(a)–1T(d)(4), other than section 367(d) property.

(11) *Section 367(d) property* is property described in section 936(h)(3)(B).

(12) *Timely filed return* is a U.S. income tax return filed on or before the due date set forth in section 6072(b), including any extensions of time to file the return granted under section 6081.

(13) *U.S. transferor shareholder* is a person that is either a control group member or a non-control group member.

(g) *Examples.* The rules of this section are illustrated by the examples set forth in this paragraph (g). See also § 1.367(a)–3T(e)(8), *Example 2* and *Example 3.* The analysis of the following examples is limited to a discussion of issues under this section. Unless otherwise indicated, for purposes of the following examples: DP1, DP2, and DC are domestic corporations that do not join in the filing of a consolidated return and none of which is a regulated investment company, a real estate investment trust, or an S corporation; FP and FA are foreign corporations created or organized under the laws of Country B and are unrelated to DP1, DP2, and DC; each corporation has a single class of stock outstanding; each share of stock of DC owned by a shareholder of DC has an identical stock basis; Business A consists solely of section 367(a) property whose fair market value exceeds its basis and that, but for the application of this section, would qualify for the active foreign trade or business exception under § 1.367(a)–2T; the fair market value of any FA stock received in a reorganization is equal to the fair market value of property exchanged therefor; FA is not a surrogate foreign corporation for purposes of section 7874 because one or more of the conditions of section 7874(a)(2)(B) is not satisfied; DC has no liabilities; DP1 and DP2 satisfy the requirements of paragraph (c)(5) of this section, and DC satisfies the requirements of § 1.6038B–1(c)(6)(ii).

Example 1. Tainted assets and non-control group ownership.

(i) *Facts.* DP1, DP2, and FP own 50%, 30%, and 20%, respectively, of the outstanding stock of DC. DP1 and DP2 are members of the same affiliated group within the meaning of section 1504. DP1's DC stock has a $120x basis and $100x fair market value. DP2's DC stock has a $50x basis and $60x fair market value. DC owns inventory with a $40x basis and a $100x fair market value. DC also owns Business A (excluding the inventory) with a $10x basis and $100x fair market value. In a reorganization described in section 368(a)(1)(F), DC transfers the inventory and Business A to FA, a newly formed corporation, in exchange for all of the outstanding stock of FA. DC's transfer of the inventory and Business A to FA qualifies as a section 361 exchange. DP1, DP2, and FP exchange the DC stock for a proportionate amount of FA stock pursuant to section 354.

(ii) *Result.* (A) Under section 367(a)(3)(B)(i), DC must recognize $60x gain ($100x fair market value less $40x basis) on the transfer of the inventory to FA. The basis of the inventory in the hands of FA is increased by the gain recognized of $60x (that is, increased from $40x to $100x). See § 1.367(a)–1(b)(4)(i)(B). Under section 367(a)(5) and paragraph (b) of this section, DC's transfer of Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must also generally recognize $90x gain ($100x fair market value less $10x basis) on the transfer of Business A to FA notwithstanding the application of section 361 (or any other nonrecognition provision enumerated in section 367(a)(1)). However, if the conditions and requirements of paragraph (c) of this section are met, DC's transfer of Business A to FA would qualify for the active foreign trade or business exception provided by section 367(a)(3) and § 1.367(a)–2T.

(B) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by five or fewer domestic corporations immediately before the reorganization (in this case, by a single domestic corporation because DP1 and DP2 together own 80% of the stock of DC). DP1 and DP2 are treated as a single domestic corporation for this purpose under paragraph (f)(1)(i) of this section because DP1 and DP2 are members of the same affiliated group.

(C) Paragraph (c)(2)(i) of this section would be satisfied only if DC recognizes $18x gain on the transfer of Business A, which is the amount of inside gain attributable to FP, a non-control group member. The $18x gain equals the product of the inside gain ($90x) multiplied by FP's ownership interest percentage (20%) in DC, reduced by $0x (the sum of the amounts described in paragraphs (c)(2)(i)(A) through (c)(2)(i)(C) of this section). Under paragraph (f)(5) of this section, the $90x inside gain is the amount by which the aggregate fair market value ($200x) of the section 367(a) property (inventory and Business A) exceeds $110x, the sum of the inside basis of $110x and the product of the section 367(a) percentage (100%) multiplied by the deductible liabilities of DC ($0x). Under paragraph (f)(4) of this section, the inside basis equals the $50x aggregate basis of the section 367(a) property transferred in the section 361 exchange, increased by the $60x gain recognized by DC on the transfer of the inventory to FA, but not by the $18x gain recognized by DC under paragraph (c)(2)(i) of this section attributable to FP. The section 367(a) percentage is 100% because the only assets transferred are the inventory and Business A, which are section 367(a) property. Under paragraph (e)(1) of this section, the $18x gain recognized under paragraph (c)(2)(i) of this section is treated as recognized with respect to Business A. FA's basis in Business A as determined under section 362 is increased for the $18x gain recognized. See § 1.367(a)–1(b)(4)(i)(B).

(D) Paragraph (c)(2)(ii) of this section is not applicable with respect to either DP1 or DP2 because the attributable inside gain with respect to each such shareholder can be preserved in the FA stock received. As stated in paragraph (ii)(C) of this *Example 1,* the amount of the inside gain is $90x. The attributable inside gain with respect to DP1 of $45x (equal to the product of $90x inside gain multiplied by DP1's 50% ownership interest percentage, reduced by $0x (the sum of the amounts described in paragraphs (c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*) of this section)) does not exceed $100x (equal to the product of the section 367(a) percentage of 100% multiplied by $100x fair market value of FA stock received by DP1). Similarly, the attributable inside gain with respect to DP2 of $27x (equal to the product of $90x inside gain multiplied by DP2's 30% ownership interest percentage, reduced by $0x (the sum of the amounts described in paragraphs (c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*) of this section)) does not exceed $60x (equal to the product of the section 367(a) percentage of 100% multiplied by $60x fair market value of FA stock received by DP2).

(E) Each control group member (DP1 and DP2) separately computes any required adjustment to stock basis under paragraph (c)(3) of this section. DP1's section 358 basis in the FA stock received of $120x (the amount of DP1's basis in the DC stock exchanged) is reduced to preserve the attributable inside gain with respect to DP1, less any gain recognized with respect to DP1 under paragraph (c)(2)(ii) of this section. Because DC does not recognize gain on the section 361 exchange with respect to DP1 under paragraph (c)(2)(ii) of this section (as determined in paragraph (ii)(D) of this *Example 1*), the attributable inside gain of $45x with respect to DP1 is not reduced under paragraph (c)(3)(i)(B) of this section. DP1's outside loss in the FA stock is $20x, the product of the section 367(a) percentage of 100% multiplied by $20x loss (equal to the difference between $100x fair market value and $120x section 358 basis in FA stock). Thus, DP1's $120x section 358 basis in the FA stock must be reduced by $65x (excess of $45x, reduced by $0x, over $20x outside loss) to $55x.

(F) DP2's aggregate section 358 basis in the FA stock received of $50x (the amount of DP2's basis in the DC stock exchanged) is reduced to preserve the attributable inside gain with respect to DP2, less any gain recognized with respect to DP2 under paragraph (c)(2)(ii) of this section. Because DC does not recognize gain on the section 361 exchange with respect to DP2 (as determined in paragraph (ii)(D) of this *Example 1*), the attributable inside gain of $27x with respect to DP2 is not reduced under paragraph (c)(3)(i)(A) of this section. DP2's outside gain in the FA stock is $10x, the product of the section 367(a) percentage of 100% multiplied by $10x gain (equal to the difference between $60x fair market value and $50x section 358 basis in FA stock). Thus, DP2's $50x section 358 basis in the FA stock must be reduced by $17x (excess of $27x, reduced by $0x, over the $10x outside gain) to $33x.

(G) Paragraph (c)(4) of this section would be satisfied only if DC complies with the requirements of § 1.6038B–1(c)(6)(iii), including filing with its timely filed return for the year of the reorganization a statement agreeing to file an amended return reporting the gain realized but not recognized on the section 361 exchange in certain cases if a significant amount of the section 367(a) property received in the section 361 exchange is disposed of, directly or indirectly, in one or more related transactions within the prescribed 60-month period.

Example 2. Triangular reorganization involving an exchange of section 367(a) property for foreign stock and cash.

(i) *Facts.* (A) DP1 wholly owns DC. DP1 and DC file a consolidated return. DP1's DC stock has a $170x basis and $200x fair market value. DC owns Business A, which has a $10x basis and $200x fair market value. FP wholly owns FA.

(B) In a triangular reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(D), DC transfers Business A to FA in exchange for $180x of FP stock and $20x cash. DC's transfer of Business A to FA qualifies as a section 361 exchange. DP1 exchanges its DC stock for $180x of FP stock and $20x cash pursuant to section 356. The triangular reorganization constitutes an indirect stock transfer under § 1.367(a)–3(d)(1)(i), and DP1 properly files a gain recognition agreement under § 1.367(a)–8 with respect to the transfer. See also § 1.367(a)–3(d)(2)(vii).

(ii) *Result.* (A) Under section 367(a)(5) and paragraph (b) of this section, DC's transfer of Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must generally recognize $190x gain ($200x fair market value less $10x basis) on the transfer of Business A to FA notwithstanding the application of section 361 (or any other nonrecognition exchange enumerated in section 367(a)(1)). However, if the requirements of paragraph (c) of this section are satisfied, DC's transfer of Business A to FA would qualify for the active foreign trade or business exception provided in section 367(a)(3) and § 1.367(a)–2T.

(B) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by five or fewer domestic corporations immediately before the reorganization (in this case, by a single domestic corporation, DP1).

(C) DC is not required to recognize gain under paragraph (c)(2)(i) of this section because, immediately before the reorganization, DC is wholly owned by DP1, a control group member. In addition, DP1's ownership interest percentage is 100%. Paragraph (c)(2)(ii) of this section would be satisfied only if DC recognizes $10x gain, computed as the amount by which the attributable inside gain with respect to DP1 of $190x (the product of $190x inside gain multiplied by DP1's ownership interest percentage of 100%, reduced by $0x (the sum of the amounts in paragraphs (c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*) of this section)) exceeds $180x (the product of the section 367(a) percentage of 100% multiplied by $180x fair market value of FP stock received by DP1). Under paragraph (f)(5) of this section, the $190x inside gain is the amount by which the $200x aggregate fair market value of Business A exceeds $10x (the sum of the inside basis of $10x and the product

of the section 367(a) percentage (100%) multiplied by the deductible liabilities of DC ($0x)). Under paragraph (f)(4) of this section, the inside basis equals the $10x aggregate basis of the section 367(a) property transferred in the section 361 exchange (not increased by the $10x gain recognized by DC under paragraph (c)(2)(ii) of this section). The section 367(a) percentage is 100% because the only asset transferred is Business A, which is section 367(a) property. Under § 1.1502–32(b)(2), DP1 increases the basis of its DC stock by the $10x gain recognized, that is, from $170x to $180x. Under paragraph (e)(1) of this section, the $10x gain recognized under paragraph (c)(2)(ii) of this section is treated as recognized with respect to Business A. FA's basis in Business A as determined under section 362 is increased for the $10x gain recognized. See § 1.367(a)–1(b)(4)(i)(B).

(D) Paragraph (c)(3) of this section would be satisfied only if DP1's section 358 basis in the FP stock is reduced by the amount by which the attributable inside gain with respect to DP1, reduced by any gain recognized by DC with respect to DP1 under paragraph (c)(2)(ii) of this section, exceeds DP1's outside gain in the FP stock. DP1's section 358 basis in the FP stock is $180x, computed as $180x basis in DC stock, as determined in paragraph (ii)(C) of this *Example 2,* decreased by $20x cash received and increased by $20x gain recognized under section 356 (such amount equal to the lesser of the $20x cash received and the $20x gain in the DC stock, computed as $200x fair market value less $180x basis). Because DC recognizes $10x gain on the section 361 exchange with respect to DP1 under paragraph (c)(2)(ii) of this section as determined in paragraph (ii)(C) of this *Example 2,* the $190x attributable inside gain with respect to DP1 is reduced by $10x to $180x under paragraph (c)(3)(i)(C) of this section. DP1's outside gain in the FP stock is $0x, the product of the section 367(a) percentage of 100% multiplied by $0x gain (the difference between $180x fair market value and $180x section 358 basis in FP stock). Thus, DP1's section 358 basis in the FP stock ($180x) must be reduced by $180x ($190x attributable inside gain reduced by $10x) to $0x.

(E) Paragraph (c)(4)(i) of this section would be satisfied only if DC complies with the requirements of § 1.6038B–1(c)(6)(iii), including filing with its tax return for the year of the reorganization a statement agreeing to file an amended return reporting the gain on the section 361 exchange in certain cases if a significant amount of the section 367(a) property received in the section 361 exchange is disposed of, directly or indirectly, in one or more related transactions within the prescribed 60-month period.

Example 3. Adjustment to basis of multiple blocks of stock; transfer of section 367(d) property.

(i) *Facts.* (A) DP1 wholly owns DC. One half of DP1's shares of stock in DC, each with an identical basis, has an aggregate basis of $60x and fair market value of $100x (Block 1). The other one half of DP's shares of stock in DC, each with an identical basis, has an aggregate basis of $120x and fair market value of $100x (Block 2). DC owns Business A ($15x basis and $150x fair market value) (excluding the patent) and a patent ($0x basis and $50x fair market value). The patent is section 367(d) property.

(B) In a reorganization described in section 368(a)(1)(F), DC transfers Business A and the patent to FA, a newly formed corporation, in exchange for 2 shares of FA stock. DC's transfer of Business A and the patent to FA qualifies as a section 361 exchange. DP1 exchanges Block 1 and Block 2 for the two shares of FA stock pursuant to section 354. Pursuant to § 1.358–2(a)(2)(i), one share of the FA stock corresponds to Block 1 (Share 1) and the other share of FA stock corresponds to Block 2 (Share 2). The basis of Share 1 and Share 2 correspond to the basis of Block 1 and Block 2, respectively.

(ii) *Result.* (A) Under section 367(a)(5) and paragraph (b) of this section, DC's transfer of Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must generally recognize $135x of gain on the transfer of Business A to FA notwithstanding the application of section 361 (or any other nonrecognition exchange described in section 367(a)(1)). However, if the requirements of paragraph (c) of this section are met, DC's transfer of Business A to FA would qualify for the active foreign trade or business exception provided in section 367(a)(3). For rules applicable to DC's transfer of the patent to FA, see section 367(d).

(B) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by five or fewer domestic corporations immediately before the reorganization (in this case, by a single domestic corporation, DP1).

(C) Paragraph (c)(2)(i) of this section is not applicable because, immediately before the reorganization, DC is wholly owned by DP1, a control group member. In addition, DP1's ownership interest percentage is 100%. Paragraph (c)(2)(ii) of this section is not applicable because the attributable inside gain with respect to DP1 can be preserved in the FA stock received. The attributable inside gain with respect to DP1 of $135x (equal to the product of $135x inside gain multiplied by DP1's 100% ownership interest percentage, reduced by $0x (the sum of the amounts in paragraphs (c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*) of this section)) does not exceed $150x (equal to the product of the section 367(a) percentage of 75% multiplied by $200x fair market value of FA stock received by DP1). Under paragraph (f)(5) of this section, the $135x inside gain is the amount by which the aggregate fair market value of Business A ($150x) exceeds $15x, the sum of the inside basis of Business A ($15x) and the product of the section 367(a) percentage (75%) multiplied by the deductible liabilities of DC ($0x). Under paragraph (f)(4) of this section, the inside basis equals the $15x aggregate basis of the section 367(a) property transferred in the exchange. The section 367(a) percentage of 75% is equal to the ratio of the fair market value of the section 367(a) property ($150x for Business A) to the fair market value of all the property transferred ($200x, the sum of $150x for Business A and $50x for the patent).

(D) Under paragraph (c)(3) of this section, DP1's aggregate section 358 basis of $180x in the stock of FA (computed as the sum of $60x basis in Share 1 and $120x basis in Share 2) is reduced by the amount by which the attributable inside gain with respect to DP1, reduced by any gain recognized by DC with respect to DP1 under paragraph (c)(2)(ii) of this section, exceeds DP1's outside gain in the FP stock received. Because DC recognizes no gain on the section 361 exchange with respect to DP1 under paragraph (c)(2)(ii) of this section as determined in paragraph (ii)(C) of this *Example 3,* the $135x attributable inside gain with respect to DP1 is not reduced under paragraph (c)(3)(i)(A) of this section. DP1's outside gain in Share 1 and Share 2 in the aggregate is $15x, the product of the section 367(a) percentage of 75% multiplied by $20x (the difference between $200x aggregate fair market value and $180x aggregate section 358 basis in the FA stock received by DP1). Thus, DP1's section 358 basis in the FA stock ($180x) must be reduced by $120x (the excess of $135x attributable inside gain, reduced by $0x, over $15x outside gain) to $60x.

(E) Under paragraph (c)(3)(iii) of this section, the $120x reduction to basis is allocated between Share 1 and Share 2 based on the relative section 358 basis of each share. Therefore, the basis in Share 1 is reduced by $40x ($120x multiplied by $60x/$180x). As adjusted, DP1's basis in Share 1 is $20x ($60x less $40x). The basis in Share 2 is reduced by $80x ($120x multiplied by $120x/$180x). As adjusted, DP1's basis in Share 2 is $40x ($120x less $80x).

(F) Paragraph (c)(4)(i) of this section would be satisfied only if DC complies with the requirements of § 1.6038B–1(c)(6)(iii), including filing with its tax return for the year of the reorganization, a statement agreeing to file an amended return reporting the gain realized but not recognized on the section 361 exchange in certain cases if a significant amount of the section 367(a) property received in the section 361 exchange is disposed of, directly or indirectly, in one or more related transactions within the prescribed 60-month period.

Example 4. Control requirement and ownership interest percentage; non-qualified property provided by foreign acquiring corporation.

(i) *Facts.* DP1 and FP own 80% and 20%, respectively, of the outstanding stock of DC. DC owns Business A with a basis of $0x and $100x fair market value. DP1's DC stock has a fair market value of $80x, and FP's DC stock has a fair market value of $20x. In a reorganization described in section 368(a)(1)(D), DC transfers Business A to FA in exchange for $80x of FA stock and $20x cash. DC's transfer of Business A to FA qualifies as a section 361 exchange. DP1 exchanges its $80x of DC stock for $60x of FA stock and $20x cash, and FP exchanges its $20x of DC stock for $20x of FA stock.

(ii) *Result.* (A) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning

of section 368(c)) by five or fewer domestic corporations immediately before the reorganization (in this case, by a single domestic corporation, DP1). The fact that the $20x cash is distributed solely to DP1 does not change the analysis of the control requirement. The control requirement is determined immediately before the reorganization and is not affected by distributions of property.

(B) Pursuant to paragraph (f)(7) of this section, the ownership interest percentages of DP1 and FP immediately before the reorganization are 80% ($80x/($80x + $20x)) and 20% ($20x/($80x + $20x)), respectively. The fact that the $20x of cash is distributed solely to DP1 does not change this result. The distribution of the $20x of cash is not taken into account for purposes of the ownership interest percentage computation because the $20x of cash distributed by DC is provided by FA to DC in the section 361 exchange.

Example 5. Control requirement and ownership interest percentage; non-qualified property provided by U.S. transferor. (i) *Facts.* The facts are the same as in *Example 4,* except as follows. Business A has a fair market value of $80x (and not $100x) and DC also owns inventory with a basis of $0x and fair market value of $20x. DC transfers Business A, but not the inventory, to FA in exchange for $80x of FA stock. DP1 exchanges its $80x of DC stock for $60x of FA stock and the $20x of inventory, and FP exchanges its $20x of DC stock for $20x of FA stock.

(ii) *Result.* (A) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by five or fewer domestic corporations immediately before the reorganization (in this case, by a single domestic corporation, DP1). The fact that the $20x of inventory is not transferred to FA, but is instead distributed solely to DP1, does not change the analysis of the control requirement. The control requirement is determined immediately before the reorganization, and is not affected by distributions of property.

(B) Pursuant to the general rule of paragraph (f)(7) of this section, the ownership interest percentages of DP1 and FP immediately before the reorganization would be 80% ($80x/($80x + $20x)) and 20% ($20x/($80x + $20x)), respectively. In this case, however, the distribution of the $20x inventory to DP1 is taken into account for purposes of computing the ownership interest percentage of DP1 and FP because the inventory is not provided by FA to DC in the section 361 exchange. With respect to DP1, the numerator of the ownership interest percentage computation is $60x, computed as the fair market value of DC stock owned by DP1 immediately before the reorganization but reduced by the fair market value of the inventory distributed to DP1 ($80x less $20x). With respect to FP, the numerator of the ownership interest percentage computation is $20x, the fair market value of the DC stock owned by FP immediately before the reorganization. With respect to both DP1 and FP, the denominator of the ownership interest percentage computation is $80x, computed as the fair market value of all DC stock immediately before the reorganization, but reduced by the fair market value of the inventory distributed to DP1 ($100x, less $20x). Accordingly, the ownership interest percentage of DP1 is 75% ($60x/$80x), and the ownership interest percentage of FP is 25% ($20x/$80x).

(h) *Applicable cross-references.* For rules relating to the character, source, and adjustments resulting from gain recognized by a U.S. transferor under section 367(a), see § 1.367(a)–1(b)(4)(i)(B) and § 1.367(a)–1T(b)(4). For rules relating to transfers of stock or securities in a section 361 exchange, see § 1.367(a)–3T(e). For rules relating to the acquisition of the stock or assets of a foreign corporation by another foreign corporation, see § 1.367(b)–4. For rules relating to transfers of section 367(d) property by a U.S. transferor to a foreign corporation, see section 367(d). For rules relating to distributions of stock of a foreign corporation by a domestic corporation under section 355 or 361, see §§ 1.367(b)–5, 1.367(e)–1, and 1.1248(f)–1 through 1.1248(f)–3. For additional rules relating to certain reporting requirements of a U.S. transferor, see § 1.6038B–1. For rules regarding expatriated entities, see section 7874 and the regulations under that section.

(i) [Reserved].

(j) *Effective/applicability date.* This section applies to transfers occurring on or after April 18, 2013.

■ **Par. 6.** Section 1.367(a)–8 is amended by:

■ 1. Adding paragraph (c)(6).

■ 2. Revising the first sentence of paragraph (j)(9).

The addition and revision read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

* * * * *

(c) * * *

(6) *Cross-reference.* For gain recognition agreements entered into pursuant to certain outbound asset reorganizations, see § 1.367(a)–3T(e)(6).

* * * * *

(j) * * *

(9) *Gain recognition agreement filed in connection with indirect stock transfers and certain triangular asset reorganizations.* With respect to a gain recognition agreement entered into in connection with an indirect stock transfer (as defined in § 1.367(a)–3(d)), or a triangular asset reorganization described in § 1.367(a)–3T(e)(6)(iv), an indirect disposition of the transferred stock or securities. * * *

* * * * *

■ **Par. 7.** Section 1.367(b)–0 is amended by:

■ 1. Revising the entry for § 1.367(b)–4(b)(1)(ii).

■ 2. Revising the heading for § 1.367(b)–6.

■ 3. Revising the entry for § 1.367(b)–6(a).

The revisions read as follows:

§ 1.367(b)–0 Table of contents.

* * * * *

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

* * * * *

(b) * * *

(1) * * *

(ii) *Special Rules*

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§ 1.367(b)–6 Effective/applicability dates and coordination rules.

(a) *Effective/applicability dates*

* * * * *

■ **Par. 8.** Section 1.367(b)–4 is amended by:

■ 1. Revising paragraph (a).

■ 2. Revising paragraphs (b)(1)(i)(B)(*2*), (b)(1)(ii), and (b)(1)(iii), *Example 4*.

■ 3. Adding paragraph (b)(1)(iii), *Example 5*.

The revisions and addition read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) *Scope.* This section applies to an acquisition by a foreign corporation (the foreign acquiring corporation) of the stock of a foreign corporation in an exchange described in section 351 or of the stock or assets of a foreign corporation in a reorganization described in section 368(a)(1) (in either case, the foreign acquired corporation). For rules applicable when, pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a) applies, see § 1.367(b)–4T(e). For purposes of this section, the term *triangular reorganization* means a reorganization described in § 1.358–6(b)(2)(i) through (b)(2)(v) (forward triangular merger, triangular C reorganization, reverse triangular merger, triangular B reorganization, and triangular G reorganization, respectively). In the case of a triangular reorganization other than a reverse triangular merger, the surviving corporation is the foreign acquiring corporation that acquires the assets or stock of the foreign acquired corporation, and the reference to controlling corporation (foreign or

domestic) is to the corporation that controls the surviving corporation. In the case of a reverse triangular merger, the surviving corporation is the entity that survives the merger, and the controlling corporation (foreign or domestic) is the corporation that before the merger controls the merged corporation. In the case of a reverse triangular merger, this section applies if stock of the foreign surviving corporation is exchanged for stock of a foreign corporation in control of the merging corporation; in such a case, the foreign surviving corporation is treated as a foreign acquired corporation for purposes of this section. A foreign corporation that undergoes a reorganization described in section 368(a)(1)(E) is treated as both the foreign acquired corporation and the foreign acquiring corporation for purposes of this section. See § 1.367(a)–3(b)(2) for transactions subject to the concurrent application of sections 367(a) and (b).

(b) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Immediately after the exchange, the foreign acquiring corporation or the foreign acquired corporation (in the case of the acquisition of the stock of a foreign acquired corporation) is not a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i)(A) of this section is a section 1248 shareholder.

(ii) *Special rules*—(A) *Receipt of foreign stock in an exchange to which § 1.367(a)–7(c) applies.* If an exchanging shareholder is a domestic corporation that transfers stock of a foreign acquired corporation in an exchange under section 361(a) or (b) (section 361 exchange) to which the exception to section 367(a)(5) in § 1.367(a)–7(c) applies, and the exchanging shareholder receives stock in either the foreign acquiring corporation or foreign controlling corporation (in the case of a triangular reorganization), such exchange will not be described in paragraph (b)(1)(i) of this section only if immediately after the exchanging shareholder's receipt of the foreign stock in the section 361 exchange, but prior to, and without taking into account, the exchanging shareholder's distribution of the foreign stock under section 361(c)(1), the foreign acquired corporation, foreign acquiring corporation, and foreign controlling corporation (in the case of a triangular reorganization) are controlled foreign corporations as to which the exchanging shareholder is a section 1248 shareholder. See paragraph (b)(1)(iii) of this section, *Example 4,* for an illustration of this rule. If an exchange is not described in paragraph (b)(1)(i) of this section as a result of the application of this paragraph, see §§ 1.1248(f)–1(b)(3) and 1.1248(f)–2(c), as applicable. For adjustments to the basis of stock of the foreign surviving corporation in certain triangular reorganizations, see paragraph (b)(1)(ii)(B)(*2*)(*i*) of this section.

(B) *Special rules for certain triangular reorganizations*—(*1*) *Receipt of domestic stock.* In the case of a triangular reorganization in which the stock received in the exchange is stock of a domestic controlling corporation, such exchange is not described in paragraph (b)(1)(i) of this section if immediately after the exchange the following foreign corporations are controlled foreign corporations as to which the domestic controlling corporation is a section 1248 shareholder—

(*i*) The foreign acquired corporation and foreign surviving corporation, in the case of a section 354 exchange of the stock of the foreign acquired corporation pursuant to a triangular B reorganization.

(*ii*) The foreign surviving corporation, in the case of a section 354 or section 356 exchange of the stock of the foreign acquired corporation pursuant to a forward triangular merger, triangular C reorganization, reverse triangular merger, or triangular G reorganization. See paragraph (b)(1)(iii) of this section, *Example 3B* for an illustration of this rule.

(*iii*) The foreign acquired corporation and foreign surviving corporation, in the case of a section 361 exchange of the stock of the foreign acquired corporation by an exchanging shareholder that is a foreign corporation described in paragraph (b)(1)(i)(A)(*2*) of this section and that is a foreign acquired corporation the assets of which are acquired in a triangular reorganization described in paragraph (b)(1)(ii)(B)(*1*)(*ii*) of this section.

(*iv*) The foreign acquired corporation and foreign surviving corporation, in the case of a section 361 exchange of the stock of the foreign acquired corporation by an exchanging shareholder that is a domestic corporation described in paragraph (b)(1)(i)(A)(*1*) of this section and that is acquired in a triangular reorganization to which the exception to section 367(a)(5) in § 1.367(a)–7(c) applies. See paragraph (b)(1)(iii) of this section, *Example 5* for an illustration of this rule.

(*2*) *Adjustments to basis of stock of foreign surviving corporation*—(*i*) *Section 361 exchanges to which § 1.367(a)–7(c) applies.* If stock of the foreign acquired corporation is acquired by the foreign surviving corporation in a section 361 exchange by reason of triangular reorganization (other than a triangular B reorganization) to which the exception to section 367(a)(5) provided in § 1.367(a)–7(c) applies, and if paragraph (b)(1)(i) of this section does not apply to the section 361 exchange by reason of (b)(1)(ii)(A) of this section (if the stock received is stock of a foreign controlling corporation) or by reason of (b)(1)(ii)(B)(*1*)(*iv*) of this section (if the stock received is stock of a domestic controlling corporation), then the controlling corporation (foreign or domestic) must apply the principles of § 1.367(b)–13 to adjust the basis of the stock of the foreign surviving corporation so that the section 1248 amount in the stock of the foreign acquired corporation (determined when the foreign surviving corporation acquires such stock) is reflected in the stock of the foreign surviving corporation immediately after the exchange. See paragraph (b)(1)(iii) of this section, *Example 5,* for an illustration of this rule.

(*ii*) *Other exchanges.* See § 1.367(b)–13 for rules regarding the adjustment to the basis of the stock of the foreign surviving corporation in exchanges pursuant to triangular reorganizations that are not subject to paragraph (b)(1)(ii)(B)(*2*)(*i*) of this section.

(iii) * * *

Example 4. (i) *Facts.* DC1, a domestic corporation, owns all of the outstanding stock of DC2, a domestic corporation. DC2 owns various assets, including all of the outstanding stock of FC2, a foreign corporation. The stock of FC2 has a value of $100, and DC2 has a basis of $30 in the stock. The section 1248 earnings and profits attributable to the FC2 stock held by DC2 is $20. DC2 does not own any stock other than the FC2 stock. FC1 is a foreign corporation that is unrelated to DC1, DC2, and FC2. In a reorganization described in section 368(a)(1)(C), FC1 acquires all of the assets of DC2 in exchange for the assumption of DC2's liabilities and voting stock of FC1 that represents 20% of the outstanding voting stock of FC1. DC2 distributes the FC1 stock to DC1 under section 361(c)(1), and the DC2 stock held by DC1 is canceled. The exception to section 367(a)(5) provided in § 1.367(a)–7(c) applies to the section 361 exchange. DC1 properly files a gain recognition agreement that satisfies the conditions of §§ 1.367(a)–3T(e)(6) and 1.367(a)–8 to qualify for nonrecognition treatment under section 367(a) with respect to DC2's transfer of the FC2 stock to FC1. See § 1.367(a)–3T(e). FC1 is not a surrogate foreign corporation (within the meaning of section 7874) because DC1 does not hold at least 60% of the stock of FC1 by reason of holding stock of DC2.

(ii) *Result.* DC2, the exchanging shareholder, is a U.S. person and a section 1248 shareholder with respect to FC2, the

foreign acquired corporation. Whether DC2 is required to include in income the section 1248 amount attributable to the FC2 stock under paragraph (b)(1)(i) of this section depends on whether, immediately after DC2's section 361 exchange of the FC2 stock for FC1 stock (and before the distribution of the FC1 stock to DC1 under section 361(c)(1)), FC1 and FC2 are controlled foreign corporations as to which DC2 is a section 1248 shareholder. See paragraph (b)(1)(ii)(A) of this section. If, immediately after the section 361 exchange (and before the distribution of the FC1 stock to DC1 under section 361(c)(1)), FC1 and FC2 are both controlled foreign corporations as to which DC2 is a section 1248 shareholder, then DC2 is not required to include in income the section 1248 amount attributable to the FC2 stock under paragraph (b)(1)(i) of this section because neither condition in paragraph (b)(1)(i)(B) of this section is satisfied. Alternatively, if immediately after the section 361 exchange (and before the distribution of the FC1 stock to DC1 under section 361(c)(1)) either FC1 or FC2 is not a controlled foreign corporation as to which DC2 is a section 1248 shareholder, then, pursuant to paragraph (b)(1)(i) of this section, DC2 must include in income the section 1248 amount attributable to the FC2 stock. For the treatment of DC2's transfer of assets other than the FC2 stock to FC1, see section 367(a)(1) and (a)(3) and the regulations under that section. Furthermore, because DC2's transfer of any other assets to FC1 is pursuant to a section 361 exchange, see section 367(a)(5) and § 1.367(a)–7. If any of the assets transferred are intangible assets for purposes of section 367(d), see section 367(d). With respect to DC2's distribution of the FC1 stock to DC1 under section 361(c)(1), see section 1248(f)(1), and §§ 1.1248(f)–1 and 1.1248(f)–2.

Example 5. (i) *Facts.* DC1, a domestic corporation, wholly owns DC2, a domestic corporation. The DC2 stock has a $100x fair market value, and DC1 has a basis of $30x in the stock. DC2's only asset is all of the outstanding stock of FC2, a foreign corporation. The FC2 stock has a $100x fair market value, and DC2 has a basis of $30x in the stock. There are $20x of earnings and profits attributable to the FC2 stock for purposes of section 1248. USP, a domestic corporation unrelated to DC1, DC2, and FC2, wholly owns FC1, a foreign corporation. In a triangular reorganization described in section 368(a)(1)(C), DC2 transfers all the FC2 stock to FC1 in exchange solely for voting stock of USP, and distributes the USP stock to DC1 under section 361(c)(1). DC1 exchanges its DC2 stock for the USP stock under section 354. DC2's transfer of the FC2 stock to FC1 is described in section 361(a) and therefore, under section 367(a)(5) and § 1.367(a)–7, is generally subject to section 367(a)(1). However, the exception to section 367(a)(5) provided in § 1.367(a)–7(c) applies to the section 361 exchange. In addition, DC1 is not required to adjust the basis of its USP stock (determined under section 358) under section 367(a)(5) and § 1.367(a)–7(c)(3). DC1 properly files a gain recognition agreement that satisfies the conditions of §§ 1.367(a)–3T(e)(6) and 1.367(a)–8 to qualify for nonrecognition treatment under section 367(a) with respect to DC2's transfer of the FC2 stock to FC1. See § 1.367(a)–3T(e).

(ii) *Result.* Immediately after the exchange, FC1 and FC2 are controlled foreign corporations as to which USP is a section 1248 shareholder because USP directly and indirectly owns all the FC1 stock and FC2 stock, respectively. Because DC2 receives stock of a domestic corporation (USP) in exchange for the FC2 stock and, immediately after the exchange, FC1 and FC2 are controlled foreign corporations as to which USP is a section 1248 shareholder, DC2's exchange of the FC2 stock for the USP stock is not described in paragraph (b)(1)(i) of this section. See paragraph (b)(1)(ii)(B)(*1*)(*iv*) of this section. Therefore, DC2 is not required to include in income the section 1248 amount in the FC2 stock. Under paragraph (b)(1)(ii)(B)(*2*)(*i*) of this section, USP must apply the principles of § 1.367(b)–13 to adjust the basis of its FC1 stock to preserve the section 1248 amount ($20x) in the FC2 stock. Under the principles of § 1.367(b)–13, each share of FC1 stock held by USP after the exchange must be divided into portions, one portion attributable to the FC1 stock owned before the exchange and one portion attributable to the FC2 stock received in the exchange. The $30x basis in the FC2 stock and the $20x earnings and profits attributable to the FC2 stock before the exchange are attributable to the divided portions of the FC1 stock to which the FC2 stock relates.

* * * * *

■ **Par. 9.** Section 1.367(b)–6 is amended by revising the section heading and paragraph (a)(1) to read as follows:

§ 1.367(b)–6 Effective/applicability dates and coordination rules.

(a) *Effective/applicability dates*—(1) *In general.* (i) Except as otherwise provided in this paragraph (a)(1) and paragraph (a)(2) of this section, §§ 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur on or after February 23, 2000.

(ii) The rules of §§ 1.367(b)–3 and 1.367(b)–4, as they apply to reorganizations described in section 368(a)(1)(A) (including reorganizations described in section 368(a)(2)(D) or (a)(2)(E)) involving a foreign acquiring or foreign acquired corporation, apply only to transfers occurring on or after January 23, 2006.

(iii) The second sentence of paragraph § 1.367(b)–4(a) applies to section 304(a)(1) transactions occurring on or after February 23, 2006; however, taxpayers may rely on this sentence for all section 304(a)(1) transactions occurring in open taxable years.

(iv) Section 1.367(b)–1(c)(2)(v), (c)(3)(ii)(A), (c)(4)(iv), (c)(4)(v), § 1.367(b)–2(j)(1)(i) and (l), and § 1.367(b)–3(e) and (f), apply to section 367(b) exchanges that occur on or after November 6, 2006. For guidance with respect to § 1.367(b)–1(c)(3)(ii)(A), (c)(4)(iv), and (c)(4)(v) and § 1.367(b)–2(j)(1)(i) for exchanges that occur before November 6, 2006, see 26 CFR part 1 revised as of April 1, 2006.

(v) Section 1.367(b)–4(a), § 1.367(b)–4(b)(1)(i)(B)(*2*), § 1.367(b)–4(b)(1)(ii), § 1.367(b)–4(b)(1)(iii), *Example 4* and *Example 5* apply to section 367(b) exchanges that occur on or after April 18, 2013. For guidance with respect to § 1.367(b)–4(a), § 1.367(b)–4(b)(1)(i)(B)(*2*), § 1.367(b)–4(b)(1)(ii) and § 1.367(b)–4(b)(1)(iii), *Example 4,* for exchanges that occur before April 18, 2013, see 26 CFR part 1 revised as of April 1, 2012.

* * * * *

■ **Par. 10.** Section 1.367(e)–1 is amended by:

■ 1. Revising the fifth sentence of paragraph (a).

■ 2. Revising paragraph (e).

■ 3. Revising the paragraph (f) subject heading.

■ The revisions read as follows:

§ 1.367(e)–1 Distributions described in section 367(e)(1).

(a) *Purpose and scope.* * * * Paragraph (e) of this section provides cross-references. * * *

* * * * *

(e) *Cross-references.* For additional rules relating to the distribution of the stock of a foreign corporation by a domestic corporation, see §§ 1.367(a)–3T(e), 1.367(a)–7, 1.367(b)–5, and 1.1248(f)–1 through 1.1248(f)–3. See the regulations under section 6038B for reporting requirements for distributions under this section.

(f) *Effective/applicability date.* * * *

* * * * *

■ **Par. 11–12.** In § 1.1248–1, for each entry in the table below in the ''Section'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place, and:

■ 1. Revise paragraphs (c) and (e).

■ 2. Add paragraph (g)(3).

Section	Remove	Add
1.1248–1(a)(1), second to last sentence.	1248(f) ..	1248(g).
1.1248–1(a)(1), last sentence.	1248(g)	1248(h).
1.1248–3(a)(6), first sentence.	1.1248–4.	1.1248–2.
1.1248–3(a)(6), first sentence.	1.1248–7.	1.1248–8.
1.1248–7(a)(1), second to last sentence.	1248(g)	1248(h).

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(c) *Gain recognized.* Section 1248(a) applies to a sale or exchange of stock in

a foreign corporation only if gain is recognized in whole or in part upon the sale or exchange. Thus, for example, if a United States person exchanges stock in a foreign corporation and no gain is recognized on the exchange under section 332, 351, 354, 355, 356, or 361, taking into account the application of section 367, then no amount is includible in the gross income of the person as a dividend under section 1248(a). But see §§ 1.1248(f)–1 and 1.1248(f)–2, providing that a domestic distributing corporation must include in gross income amounts under section 1248(f) as a result of certain foreign stock distributed pursuant to section 337, 355(c)(1), or 361(c)(1) (in certain cases without regard to the amount of gain realized by the domestic distributing corporation in the distribution).

* * * * *

(e) *Exceptions.* Under section 1248(g), this section and §§ 1.1248–2 through 1.1248–8 do not apply to:

(1) Distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies; or

(2) Any amount to the extent that the amount is, under any other provision of the Internal Revenue Code (Code), treated as—

(i) A dividend;

(ii) Gain from the sale of an asset which is not a capital asset; or

(iii) Gain from the sale of an asset held for not more than 1 year.

* * * * *

(g) *Effective/applicability date.* * * *

(3) Paragraphs (c) and (e) of this section apply to transactions occurring on or after April 18, 2013.

■ **Par. 13.** Section 1.1248–6 is amended by:

■ 1. Adding a sentence at the end of paragraph (a).

■ 2. Adding paragraphs (d) and (e).

The additions read as follows:

§ 1.1248–6 Sale or exchange of stock in certain domestic corporations.

(a) * * * See paragraph (d) of this section for a rule suspending the application of this section in certain circumstances.

* * * * *

(d) *Temporary suspension of section 1248(e).* Section 1248(e) and the rules of this section do not apply to a sale, exchange, or other disposition of the stock of a domestic corporation during a period when capital gains are taxed at a rate that equals or exceeds the rate at which ordinary income is taxed.

(e) *Effective/applicability date.* Paragraph (d) of this section applies to a sale, exchange, or other disposition of the stock of a domestic corporation on or after September 21, 1987.

■ **Par. 14.** Section 1.1248–8 is amended by:

■ 1. Revising paragraphs (a)(3), (b)(1)(iv)(A), and (b)(2)(i).

■ 2. Adding paragraph (b)(2)(iv).

■ 3. Revising paragraph (d).

The revisions and addition read as follows:

§ 1.1248–8 Earnings and profits attributable to stock following certain nonrecognition transactions.

(a) * * *

(3) *Section 381 transactions.* Stock of a foreign corporation that receives assets in a transfer to which section 361(a) or (b) applies in connection with a reorganization described in section 368(a)(1)(A), (C), (D), (F), or (G), or in a distribution to which section 332 applies, and to which section 381(c)(2)(A) and § 1.381(c)(2)–1(a) apply. See paragraph (b)(6) of this section; or

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 354, 356, or 361(a) or (b), stock in an acquired corporation for stock in either a foreign acquiring corporation or a foreign corporation that is in control, within the meaning of section 368(c), of an acquiring corporation (whether domestic or foreign); or

* * * * *

(2) * * *

(i) *Exchanging shareholder exchanges property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder.* Except as provided in paragraph (b)(2)(iv) of this section, where the exchanging shareholder exchanges in a restructuring transaction property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder immediately before the transaction, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction will be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(1) holding period in that stock that is before the restructuring transaction. See paragraph (b)(7), *Example 1* of this section.

* * * * *

(iv) *Exchanging shareholder exchanges stock of a domestic acquired corporation for stock of a foreign corporation with respect to which the exchanging shareholder is a section 1248 shareholder after the exchange.* If there is a restructuring transaction described in § 1.1248(f)–1(b)(3) to which the exception provided by § 1.1248(f)–2(c) applies with respect to a distribution by a domestic acquired corporation of stock of a foreign corporation to one or more exchanging shareholders, the earnings and profits attributable to a portion of a share of stock as provided under § 1.1248(f)–2(c)(2) (or a whole share, if no division is required) will be determined pursuant to paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(B) of this section.

(A) The earnings and profits attributable to a portion of a share of stock as provided under § 1.1248(f)–2(c)(2)(i) (or a whole share, if no division is required) will be determined in accordance with § 1.1248–2 or § 1.1248–3 (and this section, as applicable), without regard to any portion of the section 1223(1) holding period in that portion of a share (or whole share) that is before the restructuring transaction.

(B) The earnings and profits attributable to a portion of a share of stock as provided under § 1.1248(f)–2(c)(2)(ii) (or whole share, if no division is required) is the amount in paragraph (b)(2)(iv)(B)(*1*) of this section, increased by the amounts described in paragraph (b)(2)(iv)(B)(*2*) of this section.

(*1*) The amount equal to the product of the ratio of the value of the share of stock to the value of all shares of stock received by the exchanging shareholder multiplied by the amount in paragraph (b)(2)(iv)(B)(*1*)(*i*) of this section, reduced by the amount in paragraph (b)(2)(iv)(B)(*1*)(*ii*) of this section.

(*i*) The amount equal to the product of the exchanging shareholder's ownership interest percentage (within the meaning of § 1.367(a)–7(f)(7)) in the domestic acquired corporation multiplied by the earnings and profits attributable to the block of stock of the foreign corporation transferred in the section 361 exchange that relates to the portion (or whole share), determined in accordance with § 1.1248–2 or § 1.1248–3 (and this section, as applicable) immediately before the restructuring transaction (and without taking into account the application of sections 367 and 1248 to the transfer of the stock of the foreign corporation in the section 361 exchange).

(*ii*) The amount of any dividend included in the domestic acquiring corporation's gross income under section 1248(a) on the transfer of the block of stock of the foreign corporation, which relates to the portion or whole share, in the section 361 exchange by reason of gain recognized under §§ 1.367(a)–6T or 1.367(a)–7(c)(2) attributable to the exchanging shareholder.

(*2*) The earnings and profits determined in accordance with § 1.1248–2 or § 1.1248–3 (and this section, as applicable), without regard to any portion of the section 1223(1) holding period in that stock that is before the restructuring transaction. See § 1.1248(f)–2(e), *Example 2* and *Example 3.*

* * * * *

(d) *Effective/applicability dates*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, this section applies to income inclusions that occur on or after July 30, 2007.

(2) *Exception.* Paragraph (b)(2)(iv) of this section applies to restructuring transactions occurring on or after April 18, 2013.

■ **Par. 15.** Section 1.1248(f)–1 is added to read as follows:

§ 1.1248(f)–1 Certain nonrecognition distributions.

(a) *Scope and purpose.* This section and §§ 1.1248(f)–2 and 1.1248(f)–3 provide rules under section 1248(f) that apply when a domestic corporation (domestic distributing corporation) distributes stock of a foreign corporation (foreign distributed corporation) in a distribution to which section 337, 355(c)(1), or 361(c)(1) applies. Paragraph (b) of this section provides the general rule that requires the domestic distributing corporation, depending on the type of distribution, to include in gross income either the section 1248 amount or the total section 1248(f) amount. Paragraph (c) of this section provides definitions that apply for purposes of this section and §§ 1.1248(f)–2 and 1.1248(f)–3. Section 1.1248(f)–2 provides exceptions to the general rule contained in paragraph (b) of this section that apply, depending on the type of distribution. Section 1.1248(f)–3 provides reasonable cause relief procedures for failures to timely comply with certain filing requirements and effective/applicability dates.

(b) *General rule*—(1) *Section 337 distribution.* This paragraph (b)(1) applies if a domestic distributing corporation that is a section 1248 shareholder of a foreign distributed corporation distributes stock of the foreign distributed corporation in a distribution to which section 337 applies (section 337 distribution). Except as provided in § 1.1248(f)–2(a), the domestic distributing corporation must, notwithstanding any other provision of subtitle A of the Internal Revenue Code (Code), include in gross income as a dividend the section 1248 amount with respect to the stock of the foreign distributed corporation. This paragraph (b)(1) applies only to the extent the domestic distributing corporation does not recognize gain with respect to the stock of the foreign distributed corporation as a result of the section 337 distribution under another provision of subtitle A of the Code.

(2) *Existing stock distribution under section 355 or 361.* This paragraph (b)(2) applies to the extent a domestic distributing corporation distributes stock of the foreign distributed corporation that is not received in a section 361 exchange that is part of the plan of distribution, provided the distribution is described in section 355(c)(1) or section 361(c)(1) (existing stock distribution). Except as provided in § 1.1248(f)–2(b), the domestic distributing corporation must, notwithstanding any other provision of subtitle A of the Code, include in gross income as a dividend the section 1248 amount with respect to the stock of the foreign distributed corporation. This paragraph (b)(2) only applies to the extent the domestic distributing corporation does not recognize gain with respect to the stock of the foreign distributed corporation as a result of the existing stock distribution under another provision of subtitle A of the Code.

(3) *New stock distribution under section 361.* This paragraph (b)(3) applies to the extent a domestic distributing corporation distributes stock of the foreign distributed corporation that is received in a section 361 exchange that is part of the plan of distribution (and, to the extent applicable, also distributes any cash or other property), provided the distribution is described in section 361(c)(1) (new stock distribution). Except as provided in § 1.1248(f)–2(c), the domestic distributing corporation must, notwithstanding any other provision of subtitle A of the Code, include in gross income as a dividend the total section 1248(f) amount with respect to the stock of each foreign corporation transferred in the section 361 exchange. This paragraph (b)(3) applies without regard to the amount of gain realized by the domestic distributing corporation in the new stock distribution.

(c) *Definitions.* Except as otherwise provided, the following definitions apply for purposes of this section and §§ 1.1248(f)–2 and 1.1248(f)–3:

(1) *80-percent distributee* is a corporation described in section 337(c).

(2) *Block of stock* has the meaning provided in § 1.1248–2(b).

(3) *Distributee* is a shareholder of the domestic distributing corporation that receives one or more shares of stock of a foreign distributed corporation in an existing stock distribution (as defined in paragraph (b)(2) of this section) or a new stock distribution (as defined in paragraph (b)(3) of this section).

(4) *Hypothetical section 1248 amount* is, with respect to each distributee or non-stock distributee, the amount in paragraph (c)(4)(i) of this section, reduced by the amount in paragraph (c)(4)(ii) of this section computed with respect to the stock of each foreign corporation transferred in the section 361 exchange by the domestic distributing corporation for which there is not an income inclusion under § 1.367(b)–4(b)(1)(i).

(i) The amount that the domestic distributing corporation would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) if the requirements of § 1.367(b)–4(b)(1)(ii)(A) (involving the receipt of foreign stock in an exchange to which § 1.367(a)–7(c) applies) had not been satisfied and that would have been attributable to such distributee or non-stock distributee under § 1.367(a)–7(e)(4) (providing rules to attribute deemed income inclusions under § 1.367(b)–4 to persons described in § 1.367(a)–3T(e)(3)(iii)(A)).

(ii) The amount of gain recognized by the domestic distributing corporation under § 1.367(a)–7(c)(2) attributable to such distributee or non-stock distributee and allocable to the stock of such foreign corporation under § 1.367(a)–7(e)(1), but only to the extent such gain is treated as a dividend under section 1248(a).

(5) *Non-stock distributee* is a shareholder of the domestic distributing corporation that receives cash or other property but no shares of stock of the foreign distributed corporation in a new stock distribution (as defined in paragraph (b)(3) of this section).

(6) *Postdistribution amount* is the section 1248 amount with respect to the stock (or a portion of a share of stock) of the foreign distributed corporation received by a distributee, computed immediately after the distribution, but without taking into account any adjustments to the basis of the stock under § 1.1248(f)–2(b)(3) (in the case of an existing stock distribution) or

adjustments to the basis of stock or income inclusions under § 1.1248(f)–2(c)(3) (in the case of a new stock distribution). The postdistribution amount in the stock of a foreign distributed corporation received in an existing stock distribution is determined based on the distributee's holding period in the stock as adjusted under § 1.1248(f)–2(b)(2). The postdistribution amount in the stock (or a portion of a share of stock, as applicable) of a foreign distributed corporation received in a new stock distribution is determined after applying the rules in §§ 1.1248–8(b)(2)(iv) and 1.1248(f)–2(c)(2).

(7) *Section 358 basis* is the basis in stock as determined under section 358.

(8) *Section 361 exchange* is an exchange described in section 361(a) or (b).

(9) *Section 1248 amount* is the net positive earnings and profits (if any) attributable to the stock of the foreign distributed corporation, determined in accordance with § 1.1248–2 or § 1.1248–3 (taking into account § 1.1248–8, if applicable), and that would be included in gross income as a dividend under section 1248(a) if the stock were sold by the domestic distributing corporation in a transaction in which all realized gain is recognized.

(10) *Section 1248(f) amount* is the amount in paragraph (c)(10)(i) of this section, reduced by the amount in paragraph (c)(10)(ii) of this section computed with respect to the stock of each foreign corporation transferred in the section 361 exchange by the domestic distributing corporation for which the domestic distributing corporation does not have an income inclusion under § 1.367(b)–4(b)(1)(i).

(i) The amount that the domestic distributing corporation would have included in income as a dividend under § 1.367(b)–4(b)(1)(i) if the requirements of § 1.367(b)–4(b)(1)(ii)(A) (involving the receipt of foreign stock in an exchange to which § 1.367(a)–7(c) applies) had not been satisfied.

(ii) The amount of gain recognized by the domestic distributing corporation under § 1.367(a)–7(c)(2) and allocable to the stock of such foreign corporation under § 1.367(a)–7(e)(1), but only to the extent such gain is treated as a dividend under section 1248(a).

(11) *Section 1248(f) block amount* is the portion of the section 1248(f) amount, as defined in paragraph (c)(10) of this section, that relates to a block of stock of the foreign corporation if more than a single block of stock of the foreign corporation is transferred in the section 361 exchange.

(12) *Section 1248 shareholder* is a domestic corporation that satisfies the ownership requirements of section 1248(a)(2) with respect to a foreign corporation, except that a domestic corporation, other than a domestic distributing corporation, that is a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), or an S corporation (as defined in section 1361(a)) cannot be a section 1248 shareholder.

(13) *Timely filed return* is a U.S. income tax return filed on or before the due date set forth in section 6072(b), including any extensions of time to file the return granted under section 6081.

(14) *Total section 1248(f) amount* is the sum of each section 1248(f) amount (as defined in paragraph (c)(10) of this section).

■ **Par. 16.** Section 1.1248(f)–2 is added to read as follows:

§ 1.1248(f)–2 Exceptions for certain distributions and attribution rules.

(a) *Section 337 stock distribution*—(1) *General exception.* In the case of a section 337 distribution (as defined in § 1.1248–1(b)(1)), § 1.1248(f)–1(b)(1) shall not apply to the distribution of stock of the foreign distributed corporation to the 80-percent distributee if the conditions of paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section are satisfied.

(i) *80-percent distributee is a section 1248 shareholder.* Immediately after the section 337 distribution, the 80-percent distributee is a section 1248 shareholder with respect to the foreign distributed corporation.

(ii) *Holding period.* The 80-percent distributee is treated as holding the stock of the foreign distributed corporation received in the section 337 distribution for the period during which the stock was held by the domestic distributing corporation.

(iii) *Basis.* The 80-percent distributee's basis in the stock of the foreign distributed corporation received in the section 337 distribution does not exceed the domestic distributing corporation's basis in such stock at the time of the section 337 distribution.

(2) *Elective exception.* If the conditions of paragraph (a)(1)(ii) or (a)(1)(iii) of this section are not otherwise satisfied, the domestic distributing corporation and the 80-percent distributee may elect to make adjustments to the 80-percent distributee's holding period or basis in the stock of the foreign distributed corporation, as appropriate, such that the conditions described in paragraphs (a)(1)(ii) and (iii) of this section are satisfied. The conditions and procedures for making the election are described in paragraph (a)(3) of this section. See paragraphs (a)(4) and (5) of this section for adjustments that are required as a result of making the election.

(3) *Election and reporting*—(i) *Statement required by domestic distributing corporation and 80-percent distributee*—(A) *In general.* The domestic distributing corporation and the 80-percent distributee make the election described in paragraph (a)(2) of this section by each including a statement, described in paragraph (a)(3)(i)(B) of this section, with a timely filed return for the taxable year during which the section 337 distribution occurs, and by entering into a written agreement described in paragraph (a)(3)(ii) of this section. If the domestic distributing corporation or the 80-percent distributee are members of a consolidated group at the time of the section 337 distribution but not the common parent, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or the 80-percent distributee. The election described in paragraph (a)(2) of this section and made pursuant to this paragraph (a)(3) is irrevocable.

(B) *Form and content.* The statement of election must be entitled, ''STATEMENT TO ELECT TO APPLY EXCEPTION UNDER § 1.1248(f)–2(a)(2),'' state that the domestic distributing corporation and the 80-percent distributee have entered into a written agreement described in paragraph (a)(3)(ii) of this section, set forth the date of the agreement and the names of the parties to the agreement, and the adjustments to the 80-percent distributee's holding period and/or basis determined under section 334 in the stock of the foreign distributed corporation received in the section 337 distribution required under paragraphs (a)(4) and (a)(5) of this section.

(ii) *Written agreement.* The domestic distributing corporation and the 80-percent distributee must enter into a written agreement described in this paragraph (a)(3)(ii) on or before the due date (including extensions) of the domestic distributing corporation's U.S. income tax return for the taxable year during which the section 337 distribution occurs. Both the domestic distributing corporation and the 80-percent distributee must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001–1(e). Both the domestic distributing corporation and the 80-percent distributee must provide a copy of the agreement to the Internal Revenue Service within 30 days of the

receipt of a request for the agreement in connection with an examination of the taxable year during which the section 337 distribution occurs. The written agreement must—

(A) State the document is an agreement under paragraph (a)(3)(ii) of this section;

(B) Provide the name and taxpayer identification number (if any) of the domestic distributing corporation, the 80-percent distribute, and the foreign distributed corporation;

(C) With respect to the 80-percent distributee, state the holding period in the stock of the foreign distributed corporation received in the section 337 distribution as adjusted under paragraph (a)(4) of this section; and

(D) With respect to the 80-percent distributee, identify the basis as determined under section 334 of the stock of the foreign distributed corporation received in the section 337 distribution and the adjustment (if any) to such basis under paragraph (a)(5) of this section.

(4) *Holding period adjustment.* For purposes of section 1248, immediately after the section 337 distribution, the 80-percent distributee's holding period in the stock of the foreign distributed corporation received in the section 337 distribution shall equal the domestic distributing corporation's holding period in such stock at the time of the section 337 distribution.

(5) *Basis adjustments.* If the domestic distributing corporation's section 1248 amount with respect to the stock of the foreign distributed corporation received by the 80-percent distributee in the section 337 distribution exceeds the 80-percent distributee's postdistribution amount with respect to such stock (excess amount), the 80-percent distributee's basis as determined under section 334 in such stock shall be reduced by the excess amount.

(b) *Existing stock distribution under sections 355 or 361.* In the case of an existing stock distribution (as defined in § 1.1248(f)–1(b)(2)), § 1.1248(f)–1(b)(2) shall not apply to the distribution of stock of the foreign distributed corporation to a distributee that is a section 1248 shareholder with respect to the foreign distributed corporation immediately after the distribution if the domestic distributing corporation and all distributees that are section 1248 shareholders elect to apply the provisions of this paragraph (b) in accordance with paragraph (b)(1) of this section. See paragraphs (b)(2) and (3) of this section for adjustments that may be required if an election is made to apply the provisions of this paragraph (b).

(1) *Election and reporting*—(i) *Statement required by domestic distributing corporation and section 1248 shareholders*—(A) *In general.* The domestic distributing corporation and all distributees that are section 1248 shareholders elect to apply the provisions of paragraph (b) of this section by each including a statement, described in paragraph (b)(1)(i)(B) of this section, with a timely filed return for the taxable year during which the existing stock distribution occurs and by entering into a written agreement described in paragraph (b)(1)(ii) of this section. If the domestic distributing corporation or a section 1248 shareholder is a member of a consolidated group but not the common parent, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or section 1248 shareholder. The election made under this paragraph (b)(1) is irrevocable.

(B) *Form and content.* The statement of election must be entitled, ''ELECTION TO APPLY EXCEPTION UNDER § 1.1248(f)–2(b),'' state that the domestic distributing corporation and all distributees that are section 1248 shareholders have entered into a written agreement described in paragraph (b)(1)(ii) of this section, the date of the agreement and the names of the parties to the agreement, and set forth any required adjustment to each section 1248 shareholder's holding period or section 358 basis (if any) in the stock of the foreign distributed corporation received in the existing stock distribution under paragraph (b)(2) or (b)(3) of this section, respectively.

(ii) *Written agreement.* The domestic distributing corporation and the section 1248 shareholders must enter into a written agreement described in this paragraph (b)(1)(ii) on or before the due date (including extensions) of the domestic distributing corporation's U.S. income tax return for the taxable year during which the existing stock distribution occurs. Each party to the agreement must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001–1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the existing stock distribution occurs. The written agreement must—

(A) State the document is an agreement under paragraph (b)(1)(ii) of this section;

(B) Provide the name and taxpayer identification number (if any) of the domestic distributing corporation, the foreign distributed corporation, and each section 1248 shareholder;

(C) With respect to each section 1248 shareholder, state the holding period in the stock of the foreign distributed corporation received in the existing stock distribution as adjusted under paragraph (b)(2) of this section; and

(D) With respect to each section 1248 shareholder, identify the basis under section 358 of the stock of the foreign distributed corporation received in the existing stock distribution and the adjustment (if any) to the basis under paragraph (b)(3) of this section.

(2) *Holding period adjustments.* For purposes of section 1248, immediately after the existing stock distribution, each section 1248 shareholder's holding period in each share of stock of the foreign distributed corporation received in the existing stock distribution will be equal to the domestic distributing corporation's holding period in the share of stock at the time of the existing stock distribution.

(3) *Basis adjustments.* If the domestic distributing corporation's section 1248 amount with respect to a share of stock of the foreign distributed corporation received by a section 1248 shareholder in the existing stock distribution exceeds the section 1248 shareholder's postdistribution amount with respect to the share of stock (excess amount), the section 1248 shareholder's section 358 basis in the share of stock is reduced by the excess amount. For an illustration of the rule in this paragraph (b)(3), see paragraph (e) of this section, *Example 1* and *Example 3.*

(c) *New stock distribution under section 361.* In the case of a new stock distribution (as defined in § 1.1248(f)–1(b)(3)), the amount that the domestic distributing corporation is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) (total section 1248(f) amount) is reduced by the sum of the portions of any section 1248(f) amount attributable under paragraph (d) of this section to stock of the foreign distributed corporation distributed to distributees that are section 1248 shareholders, but only if the domestic distributing corporation and all the distributees that are section 1248 shareholders elect to apply the provisions of this paragraph (c) in accordance with paragraph (c)(1) of this section. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for adjustments or income inclusions that are required if an election is made to apply the provisions of this paragraph (c). The adjustments or income inclusions provided in

paragraphs (c)(2), (c)(3), and (c)(4) of this section apply after any adjustments required under section 367(a)(5) and § 1.367(a)–7(c). For illustrations of this exception, see paragraph (e) of this section, *Example 2* and *Example 3* and § 1.367(a)–3(e)(8), *Example 3.*

(1) *Election and reporting*—(i) *Statement required by domestic distributing corporation and section 1248 shareholders*—(A) *In general.* The domestic distributing corporation and all distributees that are section 1248 shareholders elect to apply the provisions of paragraph (c) of this section by each including a statement, in the form and containing the information listed in paragraph (c)(1)(i)(B) of this section, with a timely filed return for the taxable year during which the new stock distribution occurs and by entering into a written agreement described in paragraph (c)(1)(ii) of this section. If the domestic distributing corporation or a section 1248 shareholder is a member of a consolidated group at the time of the new stock distribution but is not the common parent, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or section 1248 shareholder. The election made under this paragraph (c)(1) is irrevocable.

(B) *Form and content.* The statement of election must be entitled, ''ELECTION TO APPLY EXCEPTION UNDER § 1.1248(f)–2(c),'' state that the domestic distributing corporation and each distributee that is a section 1248 shareholder have entered into a written agreement described in paragraph (c)(1)(ii) of this section, the date of the agreement and the names of the parties to the agreement, and describe, with respect to each section 1248 shareholder, the extent to which the shares of stock of the foreign distributed corporation received in the new stock distribution are divided into portions under paragraph (c)(2) of this section, any adjustments to the section 358 basis of the stock under paragraph (c)(3) of this section, and the amount the domestic distributing corporation must include in gross income as a dividend under paragraph (c)(3) of this section.

(ii) *Written agreement.* The domestic distributing corporation and all distributees that are section 1248 shareholders must enter into a written agreement described in this paragraph (c)(1)(ii) on or before the due date (including extensions) of the domestic distributing corporation's U.S. income tax return for the taxable year during which the new stock distribution occurs. Each party to the agreement must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001–1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the new stock distribution occurs. The written agreement must—

(A) State the document is an agreement under paragraph (c)(1)(ii) of this section;

(B) Provide the name and taxpayer identification number (if any) of the domestic distributing corporation, the foreign distributed corporation, and each section 1248 shareholder;

(C) With respect to each section 1248 shareholder, describe the extent to which the shares of stock of the foreign distributed corporation are divided into portions under paragraph (c)(2) of this section;

(D) With respect to each section 1248 shareholder, state the amount of earnings and profits attributable to the stock (or each block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that is attributable under § 1.1248–8(b)(2)(iv) to the stock of the foreign distributed corporation received in the new stock distribution;

(E) With respect to each section 1248 shareholder, state the amount of the section 1248(f) amount with respect to the stock (or each block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that is attributable under § 1.1248(f)–2(d) to the stock of the foreign distributed corporation received in the new stock distribution;

(F) With respect to each section 1248 shareholder, state the amount of the adjustment to the section 358 basis of the stock of the foreign distributed corporation under paragraph (c)(3) of this section; and

(G) With respect to each section 1248 shareholder, state the amount the domestic distributing corporation must include in gross income as a dividend under paragraph (c)(3) of this section.

(2) *Portions.* If the domestic distributing corporation transfers property, other than a single block of stock of a foreign corporation with respect to which the domestic distributing corporation is a section 1248 shareholder immediately before the section 361 exchange, to the foreign distributed corporation in the section 361 exchange that precedes the new stock distribution, then each share of stock of the foreign distributed corporation received by a distributee that is a section 1248 shareholder must be divided into portions as follows:

(i) One portion attributable to all property transferred in the section 361 exchange, other than property that is stock of a foreign corporation with respect to which the domestic distributing corporation is a section 1248 shareholder immediately before the section 361 exchange; and

(ii) One portion attributable to each block of stock of each foreign corporation transferred in the section 361 exchange with respect to which the domestic distributing corporation is a section 1248 shareholder immediately before the section 361 exchange. For the determination of the earnings and profits attributable to the stock (or block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that are attributable to a portion of a share of stock of the foreign distributed corporation, see § 1.1248–8(b)(2)(iv). For the determination of the section 1248(f) amount with respect to the stock (or block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that is attributable to a portion of a share of stock of the foreign distributed corporation, see paragraph (d)(2) of this section.

(3) *Basis adjustments and income inclusions.* If the section 1248(f) amount attributable to a portion of a share of stock (or whole share, if no division is required) (as determined under paragraph (d) of this section) of the foreign distributed corporation received by a distributee that is a section 1248 shareholder in the new stock distribution exceeds the section 1248 shareholder's postdistribution amount in the portion (or whole share, if no division is required) (excess amount), then the section 1248 shareholder's section 358 basis in the portion as determined under paragraph (c)(4) of this section (or whole share, if no division is required), as adjusted under § 1.367(a)–7(c)(3), is reduced by the excess amount, but not below zero. To the extent the excess amount exceeds the section 358 basis in the portion (or whole share, if no division is required), the domestic distributing corporation must include that portion of the section 1248(f) amount attributable to the portion of the share (or whole share, if no division is required) in gross income as a dividend. For an illustration of this rule, see paragraph (e) of this section, *Example 2,* and § 1.367(a)–3(e)(8), *Example 3.*

(4) *Divided shares of stock*—(i) *Basis.* The basis of a portion of a share of stock of the foreign distributed corporation created under paragraph (c)(2) of this

section is the product of the section 1248 shareholder's section 358 basis, as adjusted under § 1.367(a)–7(c)(3), in the share of stock multiplied by the ratio of the basis determined under section 362 (taking into account any gain or deemed dividends recognized under section 367) of the property (section 362 basis) to which the portion relates, to the aggregate section 362 basis of all property received by the foreign distributed corporation in the section 361 exchange. For illustrations of this rule, see paragraph (e) of this section, *Example 2,* and § 1.367(a)–3(e)(8), *Example 3.*

(ii) *Fair market value.* The fair market value of a portion of a share of stock of the foreign distributed corporation created under paragraph (c)(2) of this section is the product of the fair market value of the share of stock multiplied by the ratio of the fair market value of the property to which the portion relates to the aggregate fair market value of all property received by the foreign distributed corporation in the section 361 exchange. For illustrations of this rule, see paragraph (e) of this section, *Example 2,* and § 1.367(a)–3(e)(8), *Example 3.*

(iii) *Subsequent exchanges.* For purposes of determining the gain realized on the sale or exchange of a share of stock of the foreign distributed corporation that has divided portions under paragraph (c)(2) of this section, the amount realized on the sale or exchange of the share will be allocated to each divided portion based on the relative fair market value of the property to which the portion relates as determined at the time of the reorganization.

(iv) *Duration of divided shares.* Shares of stock of the foreign distributed corporation that are divided into portions under paragraph (c)(2) of this section must be divided so long as section 1248(a) would apply to a sale or exchange of the shares.

(d) *Attribution of all or a portion of section 1248(f) amount to certain stock of the foreign distributed corporation.* This paragraph (d) applies if there is a new stock distribution for which an election under § 1.1248(f)–2(c)(1) is made. This paragraph (d) provides rules for attributing all or a portion, as applicable, of the section 1248(f) amount with respect to the stock of each foreign corporation transferred in the section 361 exchange by the domestic distributing corporation to shares of stock, or to portions of shares of stock, as applicable, received in the foreign distributed corporation and distributed to one or more distributees that are section 1248 shareholders with respect to the foreign distributed corporation. Paragraph (d)(1) of this section provides rules to attribute the applicable section 1248(f) amount among shares of stock of the foreign distributed corporation received by one or more distributees that are section 1248 shareholders. If shares of stock are divided into portions under paragraph (c)(2) of this section, paragraph (d)(2) of this section provides additional rules to attribute the applicable section 1248 amount to portions of shares of stock received by one or more distributees that are section 1248 shareholders.

(1) *Attribution of all or a portion of section 1248(f) amount among shares of stock.* With respect to one or more shares of stock of the foreign distributed corporation distributed to a distributee that is a section 1248 shareholder, the portion of the section 1248(f) amount with respect to the stock of the foreign corporation transferred in the section 361 exchange that is equal to the distributee's hypothetical section 1248 amount is attributed among those shares of stock of the foreign distributed corporation based on the ratio of the value of a share distributed to the distributee to the value of all shares of stock distributed to the distributee (attributable share amount).

(2) *Attribution of all or a portion of section 1248(f) amount to portions of a share of stock*—(i) *Single block of stock.* If a single block of stock of the foreign corporation is transferred in the section 361 exchange, the attributable share amount (as determined under paragraph (d)(1) of this section) is attributed to the portion of the share that relates to the single block of stock of the foreign corporation.

(ii) *Multiple blocks of stock.* If multiple blocks of stock of the foreign corporation are transferred in the section 361 exchange, the attributable share amount (as determined under paragraph (d)(1) of the section) is attributed among the portions of the share that relate to such multiple blocks of stock of the foreign corporation. The portion of the attributable share amount that is attributable to a portion to which a block of stock relates is that amount that bears the same ratio that the section 1248(f) block amount with respect to that block of stock bears to the section 1248(f) amount with respect to the stock of the foreign corporation.

(e) *Examples.* The rules of this section are illustrated by the following examples. See also § 1.367(a)–3T(e)(8), *Example 3.* For purposes of the examples, unless otherwise indicated: DP and DC are domestic corporations; X is a United States citizen; FP is a foreign corporation; CFC1, CFC2, and FA are controlled foreign corporations; each corporation has a single class of stock outstanding and uses the calendar year as its taxable year; each shareholder of a corporation owns a single block of stock in the corporation; DC owns Business A, which consists solely of property whose fair market value exceeds its basis and could satisfy the requirements of the active foreign trade or business exception under section 367(a)(3) and § 1.367(a)–2T; DC owns no other assets and has no liabilities; the requirements in § 1.367(a)–7(c)(5) are satisfied; no earnings and profits of a foreign corporation are described in section 1248(d); and none of the foreign corporations in the examples is a surrogate foreign corporation (within the meaning of section 7874) as a result of the transactions described in the examples because one or more of the conditions of section 7874(a)(2)(B) is not satisfied.

Example 1. Existing stock distribution under section 355(c)(1); gain recognition and adjustment to stock basis. (i) *Facts.* DP, FP, and X own 80%, 10%, and 10%, respectively, of the outstanding stock of DC. DP's DC stock has a $140x basis, $160x fair market value, and a 2-year holding period. DC wholly owns CFC1. DC's CFC1 stock has a $50x basis, $100x fair market value (therefore a gain of $50x), $25x of earnings and profits attributable to it for purposes of section 1248, and a $25x section 1248 amount (computed as the lesser of $50x gain in the CFC1 stock and $25x of section 1248 earnings and profits), and a 3-year holding period. On December 31, year 3, DC distributes all of the CFC1 stock to DP, FP, and X on a pro-rata basis in a distribution to which section 355 applies. The fair market value of the CFC1 stock received by DP, FP, and X is $80x, $10x, and $10x, respectively. After the distribution, DP's stock in DC has a fair market value of $80x and DP's section 358 basis in the CFC1 stock is $70x (a pro rata portion, or 50%, of DP's $140x basis in the DC stock immediately before the distribution). See § 1.358–2(a)(iv).

(ii) *Result.* (A) Under § 1.367(e)–1(b)(1), DC must recognize $5x gain on the distribution of CFC1 stock to FP (10% of the $50x gain in the CFC1 stock). Under § 1.367(b)–5(b)(1)(ii), DC must also recognize $5x gain on the distribution of CFC1 stock to X (10% of the $50x gain in the CFC1 stock). Of the aggregate $10x gain recognized by DC, $5x is recharacterized as a dividend under section 1248(a), computed as 20% of the $25x section 1248 amount with respect to the CFC1 stock. See § 1.1248–1 for additional consequences.

(B) DC's distribution of CFC1 stock to DP is described in section 1248(f)(1) and § 1.1248(f)–1(b)(2) because the distribution is pursuant to section 355(c)(1) (an existing stock distribution). As a result, the general rule is that DC must include in gross income as a dividend the section 1248 amount with respect to the CFC1 stock distributed to DP, or $20x (computed as 80% of the $25x

section 1248 amount). However, if DP and DC make the election under paragraph (b)(1) of this section, § 1.1248(f)–1(b)(2) will not apply to DC's distribution of CFC1 stock to DP. If DP and DC make the election, then:

(*1*) Under paragraph (b)(2) of this section, for purposes of section 1248, immediately after the distribution DP will have a 3-year holding period in the CFC1 stock, the same holding period DC had in the CFC1 stock at the time of the distribution.

(*2*) Under paragraph (b)(3) of this section, DP's section 358 basis in the CFC1 stock ($70x) is reduced by $10x, the amount by which DC's section 1248 amount with respect to the CFC1 stock ($20x) distributed to DP exceeds DP's postdistribution amount with respect to the CFC1 stock ($10x). Under § 1.1248(f)–1(c)(6), DP's postdistribution amount equals the amount that DP would include in gross income as a dividend under section 1248(a) if DP sold the CFC1 stock immediately after the distribution, or $10x, which is computed as the lesser of the $10x gain in the CFC1 stock ($80x fair market value, less $70x basis) and $20x of section 1248 earnings and profits attributable to the CFC1 stock, taking into account DP's 3-year holding period in the stock as required by paragraph (b)(2) of this section. As adjusted under paragraph (b)(3) of this section, DP's basis in the CFC1 stock is $60x ($70x basis, less $10x required basis reduction).

Example 2. New stock distribution under section 361(c)(1); adjustment to stock basis. (i) *Facts.* DP wholly owns DC. DP's DC stock has a $180x basis and $200x fair market value. DC wholly owns CFC1 and CFC2. DC's CFC1 stock has a $70x basis, $100x fair market value (therefore a gain of $30x), $40x of earnings and profits attributable to it for purposes of section 1248, and a section 1248 amount of $30x (computed as the lesser of the $30x gain in CFC1 stock and $40x section 1248 earnings and profits). DC's CFC2 stock has a $130x basis, $100x fair market value (therefore a loss of $30x), $80x of earnings and profits attributable to it for purposes of section 1248, and a section 1248 amount of $0x (computed as the lesser of the $0x gain and $80x section 1248 earnings and profits). On December 31, Year 1, in a reorganization described in section 368(a)(1)(F), DC transfers the CFC1 stock and the CFC2 stock to FA, a newly formed corporation, in exchange for 100 shares of FA stock. DC distributes the 100 shares of FA stock to DP. DC's transfer of the CFC1 stock and CFC2 stock to FA in exchange for FA stock qualifies as a section 361 exchange, and DC's distribution of the 100 shares of FA stock to DP is pursuant to section 361(c)(1). DP exchanges its DC stock for the 100 shares of FA stock pursuant to section 354. Immediately after the transaction, DP wholly owns FA. DP and DC elect to apply the provisions of § 1.367(a)–7(c) in accordance with § 1.367(a)–7(c)(5). Pursuant to § 1.367(a)–3T(e)(3)(iii)(A), DP properly files a gain recognition agreement with respect to the CFC1 stock that satisfies the conditions of §§ 1.367(a)–3T(e)(6) and 1.367(a)–8.

(ii) *Result.* (A) DC does not recognize gain under § 1.367(a)–3T(e)(2) with respect to the transfer of the CFC1 stock to FA because the three conditions in § 1.367(a)–3T(e)(3)(i), (e)(3)(ii), and (e)(3)(iii) are satisfied. First, § 1.367(a)–3T(e)(3)(i) is satisfied because the requirements of § 1.367(a)–7(c) are satisfied, including that an election is made to apply § 1.367(a)–7(c). Second, the requirements under § 1.367(a)–3T(e)(3)(ii) related to transfers of domestic stock are not applicable because CFC1 is a foreign corporation. Third, because DC owns all the stock of FA immediately after DC's receipt of the FA stock in the section 361 exchange but prior to, and without taking into account, DC's distribution of the FA stock to DP, for purposes of satisfying the requirements of § 1.367(a)–3T(e)(3)(iii), DP properly files a gain recognition agreement with respect to the CFC1 stock that satisfies the conditions of §§ 1.367(a)–3T(e)(6) and 1.367(a)–8. Furthermore, DC is not required to recognize gain under § 1.367(a)–7(c)(2)(ii), and DP is not required to reduce its $180x section 358 basis in the FA stock under § 1.367(a)–7(c)(3), because the inside gain (within the meaning of § 1.367(a)–7(f)(5)) is $0x ($200x aggregate fair market value of CFC1 stock and CFC2 stock, less $200x aggregate basis of CFC1 stock and CFC2 stock). In addition, DC is not required to include in income as a deemed dividend the $30x section 1248 amount with respect to the CFC1 stock under § 1.367(b)–4(b)(1)(i) because immediately after DC's receipt of the FA stock in the section 361 exchange but prior to, and without taking into account, DC's distribution of the FA stock to DP, CFC1 and FA are controlled foreign corporations as to which DC is a section 1248 shareholder. See § 1.367(b)–4(b)(1)(ii)(A). With respect to the transfer of the CFC2 stock to FA, DC's section 1248 amount with respect to the CFC2 stock is $0x; therefore, § 1.367(b)–4(b)(1)(i) has no application.

(B) Under § 1.1248(f)–1(b)(3), as a result of the section 361(c)(1) distribution of the FA stock to DP (a new stock distribution), the general rule is that DC must include in gross income as a dividend the total section 1248(f) amount (defined in § 1.1248(f)–1(c)(14)). The total section 1248(f) amount is $30x, the sum of the section 1248(f) amount (defined in § 1.1248(f)–1(c)(10)) with respect to the CFC1 stock ($30x) and CFC2 stock ($0x). The section 1248(f) amount with respect to the CFC1 stock is the amount that DC would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements under § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($30x), less the amount of gain recognized by DC under § 1.367(a)–7(c)(2) that is allocable to the CFC1 stock under § 1.367(a)–7(e)(1) and treated as a dividend under section 1248(a) ($0x). Similarly, the section 1248(f) amount with respect to the CFC2 stock is the amount that DC would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC2 stock if the requirements under § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($0x), less the amount of gain recognized by DC under § 1.367(a)–7(c)(2) that is allocable to the CFC2 stock under § 1.367(a)–7(e)(1) and treated as a dividend under section 1248(a) ($0x).

(C) If, however, DP and DC make the election provided in paragraph (c)(1) of this section, the amount that DC is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) (the total section 1248(f) amount of $30x) is reduced to the extent the section 1248(f) amount with respect to the CFC1 stock ($30x) and CFC2 stock ($0x) is attributable under paragraph (d) of this section to the shares of FA stock distributed to one or more distributees that are section 1248 shareholders of FA. The only distributee is DP, and DP is a section 1248 shareholder with respect to FA. If DP and DC elect to apply paragraph (c) of this section, then:

(*1*) Under paragraph (d)(1) of this section, the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributed to the shares of FA stock distributed to DP is equal to DP's hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the CFC1 stock. Because DP is the only shareholder of DC, DP's hypothetical section 1248 amount equals the section 1248(f) amount with respect to the CFC1 stock ($30x). The $30x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 100 shares of FA stock distributed to DP, and the attributable share amount (as defined in paragraph (d)(1) of this section) is $.30x. Paragraph (d)(1) of this section has no application with respect to the CFC2 stock because there is no section 1248(f) amount with respect to the CFC2 stock.

(*2*) If the shares of FA stock are divided into portions, the rules of paragraph (d)(2) of this section apply to attribute the attributable share amount ($.30x) to portions of shares of FA stock distributed to DP. Under paragraph (c)(2)(ii) of this section, the 100 shares of FA stock are divided into two portions, one portion related to the single block of CFC1 stock and one portion related to the single block of CFC2 stock. Under paragraph (d)(2)(i) of this section, the attributable share amount of $.30x is attributed to the portion of the 100 shares of FA stock that relates to the single block of CFC1 stock. Thus, all of the $30x section 1248(f) amount with respect to the CFC1 stock is attributable to the 100 shares of FA stock.

(*3*) Because the election under paragraph (c)(1) of this section is made, the total section 1248(f) amount ($30x) that DC is otherwise required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is reduced by $30x, the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributable under paragraph (d) of this section to the shares of FA stock distributed to DP. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is $0x ($30x less $30x).

(*4*) Under paragraph (c)(4)(i) of this section, the basis of each portion is the product of DP's section 358 basis in the share of FA stock multiplied by the ratio of the section 362 basis of the property (CFC1 stock or CFC2 stock, as applicable) to which the portion relates, to the aggregate section 362 basis of all property (CFC1 stock and CFC2 stock) received by FA in the section 361 exchange. Under paragraph (c)(4)(ii) of this section, the fair market value of each portion is the product of the fair market value of the

share of FA stock multiplied by the ratio of the fair market value of the property (CFC1 stock or CFC2 stock, as applicable) to which the portion relates, to the aggregate fair market value of all property (CFC1 stock and CFC2 stock) received by FA in the section 361 exchange. The section 362 basis of the CFC1 stock and CFC2 stock is $70x and $130x, respectively, for a total section 362 basis of $200x. The CFC1 stock and CFC2 stock each has a fair market value of $100x, for a total fair market value of $200x. Therefore, the portions attributable to the CFC1 stock have an aggregate basis of $63x ($180x multiplied by $70x/$200x) and fair market value of $100x ($200x multiplied by $100x/$200x), resulting in aggregate gain in such portions of $37x (or $.37x per portion in each of the 100 shares). The portions attributable to the CFC2 stock have an aggregate basis of $117x ($180x multiplied by $130x/$200x) and fair market value of $100x ($200x multiplied by $100x/$200x), resulting in aggregate losses in such portions of $17x (or $.17x per portion in each of the 100 shares).

(*5*) Under § 1.1248–8(b)(2)(iv), the $40x earnings and profits attributable to the single block of CFC1 stock are attributed to the portions of the 100 shares of FA stock that relate to the CFC1 stock. Similarly, the $80x of earnings and profits attributable to the single block of CFC2 stock are attributed to the portions of the 100 shares of the FA stock that relate to the CFC2 stock. Thus, DP's postdistribution amount (defined in § 1.1248(f)–1(c)(6)) with respect to the portions of the shares of FA attributable to the CFC1 stock is $37x, the lesser of the aggregate gain in the portions attributable to the CFC1 stock of $37x (computed in paragraph (ii)(C)(*4*) of this *Example 2*) and the $40x earnings and profits attributable to such portions. Furthermore, DP's postdistribution amount with respect to the portions of the shares of FA attributable to the CFC2 stock is $0x, the lesser of the aggregate gain in the portions attributable to the CFC2 stock of $0x (computed in paragraph (ii)(C)(*4*) of this *Example 2* to be an aggregate loss of $17x) and the $80x earnings and profits attributable to such portions.

(*6*) Under paragraph (c)(3) of this section, DP's section 358 basis in the portions of the 100 shares of FA stock attributable to the CFC1 stock ($63x, computed in paragraph (ii)(C)(*4*) of this *Example 2*) is reduced by the amount (if any) by which the section 1248(f) amount attributable to such portions under paragraph (d) of this section ($30x, as computed in paragraph (ii)(C)(*2*) of this *Example 2*) exceeds DP's postdistribution amount with respect to such portions ($37x, computed in paragraph (ii)(C)(*5*) of this *Example 2*). Thus, there is no basis reduction in the portions of the 100 shares of FA stock attributable to the CFC1 stock. DP's section 358 basis in the portions of the 100 shares of FA stock attributable to the CFC2 stock is not reduced because the section 1248(f) amount attributable to such portions under paragraph (d) of this section is $0x (computed in paragraph (ii)(C)(*2*) of this *Example 2*), which equals DP's postdistribution amount with respect to such portions of $0x (as computed in paragraph (ii)(C)(*5*) of this *Example 2*).

Example 3. Combined existing stock distribution and new stock distribution under sections 355(c)(1) and 361(c)(1). (i) *Facts.* DP owns all 100 outstanding shares of stock of DC. DP's DC stock has a $180x basis (each of the 100 shares having a basis of $18), $200x fair market value, and 2-year holding period. DC owns all 60 shares of the outstanding stock of CFC1; all such shares constitute a single block of stock. DC's CFC1 stock has a $50x basis, $60x fair market value, $30x of earnings and profits attributable to it for purposes of section 1248, a $10x section 1248 amount (computed as the lesser of $10x gain and $30x of section 1248 earnings and profits), and a 3-year holding period. DC also owns all 40 shares of the outstanding stock of CFC2; all such shares constitute a single block of stock. DC's CFC2 stock has a $30x basis, $40x fair market value, $20x of earnings and profits attributable to it for purposes of section 1248, and a $10x section 1248 amount (computed as the lesser of $10x gain and $20x of section 1248 earnings and profits). DC also owns Business A, which has a fair market value of $100x. On December 31, year 4, in a divisive reorganization described in section 368(a)(1)(D), DC transfers the CFC2 stock to CFC1 in exchange for 40 shares of newly issued CFC1 stock. DC's transfer of the CFC2 stock to CFC1 qualifies as a section 361 exchange. DC then distributes the 100 shares of CFC1 stock (60 shares held prior to the transaction and 40 shares received in the section 361 exchange) to DP in a transaction that qualifies under section 355. DP properly files a gain recognition agreement with respect to the CFC2 stock that satisfies the conditions of §§ 1.367(a)–3T(e)(6) and 1.367(a)–8. DP and DC properly make the elections provided in § 1.367(a)–7(c)(5) and paragraphs (b) and (c) of this section.

(ii) *Result.* (A) DC does not recognize gain under § 1.367(a)–3T(e)(2) with respect to the transfer of the CFC2 stock to CFC1 because the three conditions in § 1.367(a)–3T(e)(3)(i), (e)(3)(ii), and (e)(3)(iii) are satisfied. First, § 1.367(a)–3T(e)(3)(i) is satisfied because the requirements of § 1.367(a)–7(c) are satisfied, including that an election is made to apply § 1.367(a)–7(c). Second, the requirements under § 1.367(a)–3T(e)(3)(ii) related to transfers of domestic stock are not applicable because CFC2 is a foreign corporation. Third, because DC and DP own all the stock of CFC1 for purposes of satisfying the requirements of § 1.367(a)–3T(e)(3)(iii), DP properly files a gain recognition agreement with respect to the CFC2 stock that satisfies the conditions of §§ 1.367(a)–3T(e)(6) and 1.367(a)–8. See paragraph (ii)(G) of this example for the computation of the amount of gain subject to the gain recognition agreement. In addition, DC is not required to include in income as a dividend the $10x section 1248 amount with respect to the CFC2 stock under § 1.367(b)–4(b)(1)(i) because immediately after DC's receipt of the CFC1 stock in the section 361 exchange but prior to, and without taking into account, DC's distribution of the CFC1 stock to DP, CFC1 and CFC2 are controlled foreign corporations as to which DC is a section 1248 shareholder. See § 1.367(b)–4(b)(1)(ii)(A).

(B) DC is not required to recognize gain under § 1.367(a)–7(c)(2)(i) because DP, a control group member (as defined in § 1.367(a)–7(f)(1)), owns 100% of DC. DC is not required to recognize gain under § 1.367(a)–7(c)(2)(ii) because the amount described in § 1.367(a)–7(c)(2)(ii)(A) ($10x) does not exceed the amount described in § 1.367(a)–7(c)(2)(ii)(B) ($40x). The $10x described in § 1.367(a)–7(c)(2)(ii)(A) equals the product of the inside gain (as defined in § 1.367(a)–7(f)) ($10x) multiplied by DP's ownership interest percentage (as defined in § 1.367(a)–7(f)) (100%), reduced by the sum of the amounts in § 1.367(a)–7(c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), and (c)(2)(ii)(A)(*3*) ($0x). Under § 1.367(a)–7(f)(5), the $10x of inside gain is the amount by which the aggregate fair market value of the section 367(a) property (CFC2 stock with a fair market value of $40x) exceeds the sum of the inside basis ($30x) of such property, and $0x (the product of the section 367(a) percentage (100%) multiplied by DC's deductible liabilities assumed by CFC1 ($0x)). Under § 1.367(a)–7(f)(4), the $30x inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($30x), increased by any gain or deemed dividends recognized by DC with respect to the section 367(a) property under section 367 ($0x). The $40x described in § 1.367(a)–7(c)(2)(ii)(B) is the product of the section 367(a) percentage (100%) multiplied by the fair market value of the 40 shares of CFC1 stock received by DC in the section 361 exchange and distributed to DP ($40x).

(C) Under section 358, DP must allocate the $180x basis in its 100 shares of DC stock between the 100 shares of DC stock (fair market value of $100x) and the 100 shares of CFC1 stock (fair market value of $100x) held after the distribution based on the relative fair market values of the shares. Accordingly, after the allocation of the basis under section 358, but prior to the application of § 1.367(a)–7(c)(3), the basis of DP's DC stock is $90x and the basis of DP's CFC1 stock is $90x. With respect to the $90x basis in the 100 shares of CFC1 stock, $36x is attributable to the 40 shares of CFC1 stock received by DC in the section 361 exchange ($90x multiplied by 40/100), and $54x is attributable to the 60 shares of CFC1 stock owned by DC prior to the section 361 exchange ($90x multiplied by 60/100). See § 1.358–2(a)(2)(iv).

(D) Pursuant to § 1.367(a)–7(c)(3)(ii), any adjustment to DP's basis in the CFC1 stock required under § 1.367(a)–7(c)(3)(i) can only be made with respect to the 40 shares of CFC1 stock received by DC in the section 361 exchange. Under § 1.367(a)–7(c)(3)(i)(A), DP must reduce its section 358 basis ($36x) in the 40 shares of CFC1 stock by $6x, the amount by which DP's attributable inside gain ($10x), reduced by the sum of the amounts in § 1.367(a)–7(c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), and (c)(2)(ii)(A)(*3*) ($0x) (as computed in paragraph (ii)(B) of this *Example 3*) exceeds DP's outside gain (as defined in § 1.367(a)–7(f)) ($4x). DP's $4x outside gain equals the product of the section 367(a) percentage (as defined in § 1.367(a)–7(f)) (100%) multiplied by the amount by which the fair market value ($40x) of the 40

shares of CFC1 stock is greater than DP's section 358 basis in the stock ($36x). After the $6x reduction to stock basis required under § 1.367(a)–7(c)(3), but before the application of § 1.1248(f)–2(c)(3), DP's basis in the 40 shares of CFC1 stock is $30x.

(E) DC's distribution of the 40 shares of newly issued CFC1 stock is subject to § 1.1248(f)–1(b)(3) (a new stock distribution). Except as provided in § 1.1248(f)–2(c), under § 1.1248(f)–1(b)(3) DC must include in gross income as a dividend the total section 1248(f) amount (as defined in § 1.1248(f)–1(c)(14)). The total section 1248(f) amount is $10x, the sum of the section 1248(f) amount (as defined in § 1.1248(f)–1(c)(10)) with respect to the stock of each foreign corporation transferred in the section 361 exchange. Only the CFC2 stock is transferred in the section 361 exchange; therefore, the total section 1248(f) amount is equal to the section 1248(f) amount with respect to the CFC2 stock ($10x). The $10x section 1248(f) amount with respect to the CFC2 stock is the amount that DC would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC2 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($10x), reduced by the amount of gain recognized by DC under § 1.367(a)–7(c)(2) allocable to the CFC2 stock and treated as a dividend under section 1248(a) (in this case, $0x, as described in paragraph (ii)(B) of this *Example 3*).

(F) However, because DC and DP (a section 1248 shareholder of CFC1 immediately after the distribution) elect to apply the provisions of § 1.1248(f)–2(c) (as provided in § 1.1248(f)–2(c)(1)), the amount that DC is required to include in income as a dividend under § 1.1248(f)–1(b)(3) ($10x total section 1248(f) amount as computed in paragraph (ii)(E) of this *Example 3*) is reduced by the sum of the portions of the section 1248(f) amount with respect to the CFC2 stock that is attributable (under the rules of § 1.1248(f)–2(d)) to the 40 shares of CFC1 stock distributed to DP. As stated in the facts, the election is made to apply § 1.1248(f)–2(c).

(*1*) Under paragraph (d)(1) of this section, the portion of the section 1248(f) amount with respect to the CFC2 stock that is attributed to the 40 shares of CFC1 stock distributed to DP is equal to DP's hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the CFC2 stock. Because DP is the only shareholder of DC, DP's hypothetical section 1248 amount equals the section 1248(f) amount with respect to the CFC2 stock ($10x). The $10x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 40 shares of CFC1 stock distributed to DP, and the attributable share amount (as defined in paragraph (d)(1) of this section) is $.25x.

(*2*) The 40 shares of CFC1 stock are not divided into portions under paragraph (c)(2) of this section because the only property transferred by DC to CFC1 is a single block of stock of CFC2. If the 40 shares of CFC1 stock were required to be divided into portions, however, the rules of paragraph (d)(2) of this section apply to attribute the attributable share amount ($.25x) to portions of shares of CFC1 stock distributed to DP.

(*3*) Because the election under paragraph (c)(1) of this section is made, the total section 1248(f) amount ($10x) that DC is otherwise required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is reduced by $10x, the portion of the section 1248(f) amount with respect to the CFC2 stock that is attributable under paragraph (d) of this section to the 40 shares of CFC1 stock distributed to DP. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is $0x ($30x less $30x).

(*4*) Under § 1.1248–8(b)(2)(iv), the $20x earnings and profits attributable to the single block of CFC2 stock are attributed pro rata to the 40 shares of CFC1 stock. Thus, DP's postdistribution amount (defined in § 1.1248(f)–1(c)(6)) with respect to the 40 shares of CFC1 stock attributable to the CFC2 stock is $10x, the lesser of the aggregate gain in the 40 shares of CFC1 stock of $10x ($40x fair market value, less $30x section 358 basis, as described in paragraph (ii)(D) of this *Example 3*) and the $20x earnings and profits attributable to such shares.

(*5*) Under paragraph (c)(3) of this section, DP's section 358 basis in the 40 shares of CFC1 stock ($30x) is reduced by the amount (if any) by which the section 1248(f) amount attributable to such shares under paragraph (d) of this section ($10x, as computed in paragraph (ii)(E) of this *Example 3*) exceeds DP's postdistribution amount with respect to such shares ($10x). Thus, there is no basis reduction in the 40 shares of CFC1 stock.

(G) Pursuant § 1.367(a)–3T(e)(6), the amount of gain subject to the gain recognition agreement entered into by DP with respect to the CFC2 stock is $10x, which is the product of DP's ownership interest percentage (100%) multiplied by the gain realized by DC in the 361 exchange prior to taking into account the application of any other provision of section 367 ($10x), reduced by the sum of the amounts described in § 1.367(a)–3T(e)(6)(i)(A), (e)(6)(i)(B), (e)(6)(i)(C), and (e)(6)(i)(D) ($0x).

(H) DC's distribution of the 60 shares of CFC1 stock it held before the section 361 exchange is subject to § 1.1248(f)–1(b)(2) (an existing stock distribution); however, because DC and DP make the election provided in paragraph (b)(1) of this section, § 1.1248(f)–1(b)(2) does not apply to the distribution.

(*1*) Under paragraph (b)(2) of this section, for purposes of section 1248, DP will have a 3-year holding period in the 60 shares of CFC1 stock received, the same holding period that DC had in the 60 shares of CFC1 stock.

(*2*) Under paragraph (b)(3) of this section, DP's section 358 basis in the 60 shares of CFC1 stock received ($54x, as computed in paragraph (ii)(C) of this *Example 3*) is reduced by $4x, the amount by which DC's section 1248 amount ($10x) with respect to the 60 shares of CFC1 stock exceeds DP's postdistribution amount ($6x) with respect to the 60 shares of CFC1 stock. Under § 1.1248(f)–1(c)(6), DP's postdistribution amount with respect to the 60 shares of CFC1 stock equals the amount that DP would include in gross income as a dividend under section 1248(a) if DP sold the 60 shares of CFC1 stock immediately after the distribution, or $6x, which is computed as the lesser of the $6x gain in the such shares of CFC1 stock ($60x fair market value, less $54x basis) and $30x of section 1248 earnings and profits attributable to the CFC1 stock, taking into account DP's 3-year holding period in the stock as required by paragraph (b)(2) of this section. As adjusted under paragraph (b)(3) of this section, DP's basis in the 60 shares of CFC1 stock is $50x ($54x basis, less $4x basis reduction).

(f) *Applicable cross-references.* For rules relating to the attribution of earnings and profits to the stock of a foreign corporation following certain nonrecognition transactions, see § 1.1248–8. For rules relating to a transfer of property by a domestic corporation to a foreign corporation in a section 361 exchange that precedes a new stock distribution, see § 1.367(a)–7. If the property transferred includes stock of a corporation, see also §§ 1.367(a)–3T(e) and 1.367(b)–4. For other rules that may apply if a domestic corporation distributes the stock of a foreign corporation in a new stock distribution or an existing stock distribution satisfying the requirements of section 355, see §§ 1.367(b)–5(b)(1) and 1.367(e)–1.

■ **Par. 17.** Section 1.1248(f)–3 is added to read as follows:

§ 1.1248(f)–3 Reasonable cause and effective/applicability dates.

(a) *Reasonable cause for failure to comply [Reserved]. For further guidance, see § 1.1248(f)–3T(a).*

(b) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (b)(2)(ii) of this section, §§ 1.1248(f)–1 and 1.1248(f)–2 apply to distributions occurring on or after April 18, 2013.

(2) *Transactions described in Notice 87–64*—(i) *Gain not otherwise recognized.* For distributions occurring on or after September 21, 1987, and before April 18, 2013, section 1248(f)(1) shall not apply to the extent the domestic distributing corporation recognizes gain with respect to the stock of the foreign distributed corporation as a result of the distribution under another provision of subtitle A of the Internal Revenue Code.

(ii) *Section 355 distributions.* Taxpayers may apply the provisions of § 1.1248(f)–2(b) to distributions occurring on or after September 21, 1987.

■ **Par. 18.** Section 1.6038B–1 is amended by:

■ 1. Revising paragraph (c)(6).

■ 2. Revising paragraph (f)(3).

■ 3. Revising the paragraph heading and the first sentence of paragraph (g)(1).

■ 4. Adding paragraph (g)(5).

The addition and revisions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(c) * * *

(6) *Transfers subject to section 367(a)(5)*—(i) *In general.* This paragraph (c)(6) applies to a domestic corporation (U.S. transferor) that transfers section 367(a) property (as defined in § 1.367(a)–7(f)(10)) to a foreign corporation in a section 361 exchange (as defined in § 1.367(a)–7(f)(8)) and to which the provisions of § 1.367(a)–7(c) apply. Paragraph (c)(6)(ii) of this section establishes the time and manner for the U.S. transferor to elect to apply the provisions of § 1.367(a)–7(c). Paragraph (c)(6)(iii) of this section establishes the manner for the U.S. transferor to satisfy the requirement of § 1.367(a)–7(c)(4).

(ii) *Election.* The U.S. transferor elects to apply the provisions of § 1.367(a)–7(c) by including a statement entitled, ''ELECTION TO APPLY EXCEPTION UNDER § 1.367(a)–7(c),'' with its timely filed return (within the meaning of § 1.367(a)–7(f)(12)) for the taxable year during which the reorganization occurs and that includes the information described in paragraphs (c)(6)(ii)(A), (c)(6)(ii)(B), (c)(6)(ii)(C), (c)(6)(ii)(D), (c)(6)(ii)(E), (c)(6)(ii)(F), (c)(6)(ii)(G), and (c)(6)(ii)(H) of this section. See § 1.367(a)–7(c)(5)(ii) for the statement required to be filed by a control group member (as defined in § 1.367(a)–7(f)(1)) or final distributee (as defined in § 1.367(a)–7(d)).

(A) The name and taxpayer identification number (if any) of each control group member and final distributee (if any), the foreign acquiring corporation, and in the case of a triangular reorganization (within the meaning of § 1.358–6(b)(2)) the corporation that controls the foreign acquiring corporation, and the ownership interest percentage (as defined in § 1.367(a)–7(f)(7)) in the U.S. transferor of each control group member.

(B) A calculation of the gain recognized (if any) by the U.S. transferor under § 1.367(a)–7(c)(2)(i) and (c)(2)(ii), and the basis adjustments (if any) required to be made by each control group member under § 1.367(a)–7(c)(3).

(C) The date on which the U.S. transferor and each control group member or final distributee entered into the written agreement described in § 1.367(a)–7(c)(5)(iv).

(D) The amount of any deductible liability (as defined by § 1.367(a)–7(f)(2)).

(E) The fair market value (as defined by § 1.367(a)–7(f)(3)) of property transferred to the foreign acquiring corporation in the section 361 exchange.

(F) The inside basis (as defined by § 1.367(a)–7(f)(4)).

(G) The inside gain (as defined by § 1.367(a)–7(f)(5)).

(H) The section 367(a) percentage (as defined by § 1.367(a)–7(f)(9)).

(iii) *Agreement to amend U.S. transferor's tax return.* The U.S. transferor complies with the requirement of § 1.367(a)–7(c)(4)(i) by attaching a statement to its timely filed return (within the meaning of § 1.367(a)–7(f)(12)) for the taxable year in which the reorganization occurs, entitled ''STATEMENT UNDER § 1.367(a)–7(c)(4) FOR TRANSFERS OF ASSETS TO A FOREIGN CORPORATION IN A SECTION 361 EXCHANGE.'' The statement must certify that if a significant amount of the section 367(a) property received by the foreign acquiring corporation from the U.S. transferor in the section 361 exchange is disposed of, directly or indirectly, in one or more related transactions described in paragraph (c)(6)(iii)(B) of this section occurring within the sixty (60) month period that begins on the date of distribution or transfer (within the meaning of § 1.381(b)–1(b)), then the exception provided in § 1.367(a)–7(c) will not apply to the section 361 exchange. Accordingly, the U.S. transferor will recognize the gain realized but not recognized in the section 361 exchange, computed as if the exception provided in § 1.367(a)–7(c) had never applied. A U.S. income tax return (or amended U.S. income tax return, as the case may be) for the year in which the reorganization occurred reporting the gain must be filed. If the section 361 exchange occurs in connection with a triangular reorganization (within the meaning of § 1.358–6(b)(2)) and the corporation that controls the foreign acquiring corporation is foreign, an indirect disposition of the section 367(a) property includes the disposition by such controlling foreign corporation of the stock of the foreign acquiring corporation.

(A) *Disposition of a significant amount*—(*1*) *General rule.* Except as provided in paragraphs (c)(6)(iii)(A)(*2*) and (c)(6)(iii)(A)(*3*) of this section, for purposes of this paragraph (c)(6)(iii), a disposition of a significant amount occurs if, in one or more related transactions, the foreign acquiring corporation disposes of an amount of the section 367(a) property received from the U.S. transferor in the section 361 exchange that is greater than 40 percent of the fair market value of all of the section 367(a) property transferred in the section 361 exchange.

(*2*) *Exception for certain nonrecognition exchanges.* Section 367(a) property that is subsequently transferred (retransferred property) pursuant to a nonrecognition provision is not treated as disposed of for purposes of paragraph (c)(6)(iii)(A)(*1*) of this section, provided such transfer satisfies, and is treated in a manner consistent with the principles underlying § 1.367(a)–8(k). Thus, for example, if section 367(a) property is subsequently transferred to a foreign corporation in exchange solely for stock in a transaction described in section 351, such retransferred property is not treated as disposed of for purposes of paragraph (c)(6)(iii)(A)(*1*) of this section; in such a case, however, a subsequent disposition of either the retransferred property by the transferee foreign corporation, or of the stock of the transferee foreign corporation received in exchange for the retransferred property, is subject to the provisions of paragraph (c)(6)(iii)(A)(*1*) of this section.

(*3*) *Exception for dispositions occurring in the ordinary course of business.* Dispositions of section 367(a) property described in section 1221(a)(2) occurring in the ordinary course of business of the foreign acquiring corporation are not treated as disposed of for purposes of paragraph (c)(6)(iii)(A)(*1*) of this section.

(B) *Gain recognition transaction*—(*1*) *General rule.* A transaction is described in this paragraph (c)(6)(iii)(B) if the transaction is entered into with a principal purpose of avoiding the U.S. tax that would have been imposed on the U.S. transferor on the disposition of the property transferred to the foreign acquiring corporation in the section 361 exchange. A disposition may have a principal purpose of tax avoidance even if the tax avoidance purpose is outweighed by other purposes when taken together.

(*2*) *Presumptive tax avoidance.* For purposes of this paragraph (c)(6)(iii)(B), the principal purpose of the foreign acquiring corporation's disposition of a significant amount of the section 367(a) property within the two-year period that begins on the date of distribution or transfer (within the meaning of § 1.381(b)–1(b)) (whether in a recognition or nonrecognition transaction) will be presumed to be the avoidance of the U.S. tax that would have been imposed on the U.S. transferor on the disposition of the property transferred to the foreign acquiring corporation in the section 361 exchange. However, this presumption

will not apply if it is demonstrated to the satisfaction of the Director of Field Operations, Large Business & International (or any successor to the roles and responsibilities of such person (Director) that the avoidance of U.S. tax was not a principal purpose of the disposition.

(*3*) *Interest.* If additional tax is required to be paid as a result of a transaction described in paragraph (c)(6)(iii)(B) of this section, then interest must be paid on that amount at rates determined under section 6621 with respect to the period between the date prescribed for filing the U.S. transferor's income tax return for the year in which the reorganization occurs and the date on which the additional tax for that year is paid.

* * * * *

(f) * * *

(3) *Reasonable cause for failure to comply [Reserved]. For further guidance, see § 1.6038B–1T(f)(3).*

* * * * *

(g) *Effective/applicability dates.* (1) Except as provided in paragraphs (g)(2) through (g)(5) of this section, this section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999 (which are not required to be reported under section 6038B), and except for transfers described in paragraph (e) of this section, which applies to transfers that are subject to §§ 1.367(e)–1(f) and 1.367(e)–2(e). * * *

* * * * *

(5) Paragraphs (c)(6) and (f)(3) of this section apply to transfers occurring on or after April 18, 2013. For guidance with respect to paragraphs (c)(6) and (f)(3) of this section before April 18, 2013, see 26 CFR part 1 revised as of April 1, 2012.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 19.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 20.** In § 602.101, the following entries are added in numerical order to the table in paragraph (b) to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)–7	1545–2183
* * * * *	
1.367(a)–8	1545–2183
* * * * *	
1.1248(f)–2	1545–2183
* * * * *	
1.6038B–1	1545–2183
* * * * *	

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–05700 Filed 3–18–13; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9615]

RIN 1545–BJ75

Indirect Stock Transfers and the Coordination Rule Exceptions; Transfers of Stock or Securities in Outbound Asset Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations. These regulations eliminate one of two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations. The regulations also modify the third exception to the coordination rule for certain outbound exchanges so that this exception is consistent with the remaining asset reorganization exception. In addition, the regulations modify, in various contexts, procedures for obtaining reasonable cause relief. Finally, the regulations implement certain changes with respect to transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange. The regulations primarily affect domestic corporations that transfer property to foreign corporations in certain outbound nonrecognition exchanges. The text of these temporary regulations serves as the text of the proposed regulations (REG–132702–10) published in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* The final and temporary regulations are effective on March 19, 2013.

Applicability Date: For dates of applicability, see § 1.367(a)–3T(g), § 1.367(a)–6T(e)(4), 1.367(a)–7T(e)(2)(iv), 1.1248(f)–3T(a)(3), and 1.6038B–1T(f)(3)(iii).

FOR FURTHER INFORMATION CONTACT: Robert B. Williams, Jr., (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2183.

The collections of information are in §§ 1.367(a)–3(d)(2), 1.367(a)–3T(e)(3) and (e)(6), 1.367(a)–7T(e), 1.1248(f)–3T, and 1.6038–1T(f). The collections of information are mandatory. The likely respondents are domestic corporations.

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 control number. Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On August 20, 2008, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued proposed regulations under sections 367, 1248, and 6038B of the Internal Revenue Code (Code) (2008 proposed regulations) concerning transfers of property by a domestic corporation to a foreign corporation in an exchange described in section 361(a) or (b) (section 361 exchange), and certain nonrecognition distributions of stock of a foreign corporation by a domestic corporation (REG–209006–89, 73 FR 49278; 2008–41 IRB 867). A correction to the 2008 proposed regulations was published in the **Federal Register** on September 26, 2008; 73 FR 56535 (2008–41 IRB 867). No public hearing on the 2008 proposed regulations was requested or held; however, comments were received. All comments are available at *www.regulations.gov* or upon request. Based, in part, on comments received, the Treasury Department and the IRS adopt portions of the 2008 proposed regulations, with modifications, as final regulations elsewhere in this issue of the **Federal Register**. A portion of the 2008 proposed regulations is adopted, with modifications, in this Treasury decision as temporary regulations.

On February 11, 2009, the Treasury Department and the IRS issued final regulations under section 367 (2009 final regulations) concerning gain recognition agreements with respect to certain transfers of stock or securities by United States persons to foreign corporations (TD 9446, 74 FR 6952; 2009–9 IRB 607). A correction to the 2009 final regulations was published in the **Federal Register** on March 27, 2009 (74 FR 13340; 2009–13 IRB 731). The 2009 final regulations included regulations addressing the transfer of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange. The portion of the 2009 final regulations concerning outbound transfers of stock or securities in a section 361 exchange is withdrawn, revised, and issued in this Treasury decision as temporary regulations.

Explanation of Provisions

A. Coordination Rule and Exceptions—In General

Section 1.367(a)–3(d)(2)(vi)(A) (coordination rule) provides that if in connection with an indirect stock transfer, as defined in § 1.367(a)–3(d)(1), a U.S. person transfers assets to a foreign corporation (direct asset transfer) in an exchange described in section 351 or section 361, the rules of section 367 and the regulations under that section apply first to the direct asset transfer and then to the indirect stock transfer. There are three exceptions to the coordination rule, as described in this preamble.

Two exceptions to the coordination rule provide that section 367(a) and (d) do not apply to any assets transferred by a domestic acquired corporation to a foreign acquiring corporation in an asset reorganization that are re-transferred to a domestic corporation that is controlled by the foreign acquiring corporation (domestic controlled corporation). These exceptions only apply, however, if the domestic controlled corporation's basis in the re-transferred assets is not greater than the domestic acquired corporation's basis in such assets (the basis comparison rule), and the conditions described in § 1.367(a)–3(d)(2)(vi)(B)(*1*)(*i*) (section 367(a)(5) exception) or (d)(2)(vi)(B)(*1*)(*ii*) (indirect domestic stock transfer exception) are satisfied. See § 1.367(a)–3(d)(2)(vi)(B)(*1*). The section 367(a)(5) exception applies only if the reorganization satisfies the conditions described in section 367(a)(5) and any regulations issued pursuant to section 367(a)(5). For example, the domestic acquired corporation must be controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations, and basis adjustments must be made to the stock of the foreign acquiring corporation received in the reorganization. See § 1.367(a)–7(c).

The indirect domestic stock transfer exception applies only if the requirements of § 1.367(a)–3(c)(1)(i), (c)(1)(ii), and (c)(1)(iv) are satisfied with respect to the indirect stock transfer of stock in the domestic acquired corporation, and certain filing requirements are satisfied.

The third exception (section 351 exception) to the coordination rule applies if a U.S. person (U.S. transferor) transfers assets to a foreign corporation in a section 351 exchange, to the extent that such assets are transferred by such foreign corporation to a domestic corporation in another section 351 exchange. See § 1.367(a)–3(d)(2)(vi)(B)(*2*). Consistent with the section 367(a)(5) exception and the indirect domestic stock transfer exception, the section 351 exception only applies if the domestic transferee's basis in the assets is not greater than the basis that the U.S. transferor had in such assets.

B. Notice 2008–10 and 2008 Proposed Regulations

On December 28, 2007, the Treasury Department and the IRS issued Notice 2008–10 (2008–1 CB 277) in response to outbound asset reorganization transactions that relied on the section 367(a)(5) exception to repatriate earnings of a foreign corporation without the recognition of a corresponding amount of gain or income inclusion. Notice 2008–10 announced that the section 367(a) exception would be revised to clarify that any adjustment to basis required under section 367(a)(5) can only be made to stock of the foreign acquiring corporation received by the controlling domestic corporate shareholders in the asset reorganization. In addition, the notice states that the revised regulations would confirm that to the extent the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation cannot be preserved in the stock received by the controlling domestic corporate shareholders in the reorganization, the domestic acquired corporation's transfer of property to the foreign acquiring corporation is subject to section 367(a) and (d) (see § 601.601(d)(2)(ii)(*b*)).

The 2008 proposed regulations would amend the current regulations to incorporate, with modifications, the clarifications to the section 367(a)(5) exception announced in Notice 2008–10. In addition, the preamble to the 2008 proposed regulations states that the Treasury Department and the IRS continue to study transactions that have the effect of repatriating earnings and profits of a foreign corporation without the recognition of gain or a dividend inclusion.

The 2008 proposed regulations also would modify the section 367(a)(5) exception and the indirect domestic stock transfer exception to provide that for purposes of determining whether the domestic controlled corporation's basis in the re-transferred assets is not greater than the domestic acquired corporation's basis in such assets, any increase in basis that results from gain recognized by the domestic acquired corporation on the transfer of the re-transferred assets to the foreign acquiring corporation is not taken into account.

C. Elimination of Section 367(a)(5) Exception

The Treasury Department and the IRS have become aware of additional transactions involving outbound asset reorganizations that involve the repatriation of earnings and profits of a foreign corporation where taxpayers take the position that the transaction does not require the recognition of gain or a dividend inclusion. These transactions, which rely on the section 367(a)(5) exception and are structured to avoid gain recognition under section 367(a), may not be affected by the clarifications made to the section 367(a)(5) exception in Notice 2008–10. In one such transaction, for example, the foreign acquiring corporation issues stock and property other than qualified property (within the meaning of section 361(c)(2)(B)) in the reorganization and transfers property that is not eligible for an exception to section 367(a)(1) (such as property used in the United States) to a domestic controlled corporation. The amount of stock issued by the foreign acquiring corporation is sufficient to preserve the built-in gain in the property transferred to it by the domestic acquired corporation in the section 361 exchange. Thus, the parties take the position that the section 367(a)(5) exception applies and that no gain is recognized on the transfer under section 367(a).

Although these types of transactions are not directly covered by Notice 2008–10, they give rise to the same repatriation concerns that the notice was intended to address.

The Treasury Department and the IRS have, over time, clarified and modified the coordination rule exceptions to address various transactions that give rise to policy concerns. See, for example, TD 9243 (2006–1 CB 475) and Notice 2008–10. These transactions typically do not involve transactions with unrelated parties, but instead arise in connection with transactions with affiliates that appear to be primarily motivated to achieve U.S. tax benefits. After studying these issues further, including in light of the transactions discussed above, the Treasury Department and the IRS no longer believe the section 367(a)(5) exception is appropriate. As a result, the section 367(a)(5) exception is eliminated by the temporary regulations. The indirect domestic stock transfer exception, however, which involves transactions between unrelated parties, is retained.

The Treasury Department and the IRS continue to study nonrecognition transactions that are intended to repatriate earnings and profits of foreign corporations without the recognition of gain or a dividend inclusion.

D. Domestic Transferee's Basis in Assets for Purposes of the Section 351 Exception

In response to a comment, the temporary regulations modify the basis comparison rule in the section 351 exception so that it is consistent with the basis comparison rule in the indirect domestic stock transfer exception, as modified by the 2008 proposed regulations. Thus, the section 351 exception is modified in the temporary regulations to provide that for purposes of determining whether the domestic transferee's basis in the assets is not greater than the U.S. transferor's basis in the assets, any increase in basis that results from gain recognized by the U.S. transferor with respect to such assets in the initial section 351 exchange is not taken into account.

E. Transfers of Stock or Securities in an Outbound Section 361 Exchange

The current final regulations under § 1.367(a)-3(e) provide the general rule that the outbound transfer of stock or securities in a section 361 exchange is subject to section 367(a)(1), unless specified conditions are satisfied. One condition is that the requirements of section 367(a)(5) and any regulations thereunder must be satisfied. Another condition is that any control group member that owns (with attribution) five percent or more of the stock (by vote or value) of the transferee foreign corporation immediately after the transaction must enter into a gain recognition agreement with respect to the control group member's share of the gain (based on its ownership interest in the U.S. transferor) (GRA requirement).

In connection with final regulations under section 367(a)(5), published elsewhere in this issue of the **Federal Register**, these temporary regulations make conforming modifications to the GRA requirement such that the five-percent ownership threshold is determined by reference to the U.S. transferor's ownership of the transferee foreign corporation (rather than by reference to ownership of the transferee foreign corporation by control group members). For this purpose, ownership is determined immediately after the U.S.

transferor's transfer of the stock or securities to the transferee foreign corporation in the section 361 exchange, but prior to and without taking into account the U.S. transferor's distribution under section 361(c) of the stock received. If the U.S. transferor meets the five-percent ownership threshold with respect to the transferee foreign corporation, then two conditions must be satisfied in order to be eligible to file a GRA. The first condition is that each shareholder of the U.S. transferor that is a ''qualified U.S. person'' (generally, any U.S. person except domestic partnerships or special corporate entities that are not subject to tax) and satisfies the five-percent ownership threshold must enter into a gain recognition agreement, unless the amount of gain that would otherwise be subject to the gain recognition agreement is zero. The gain recognition agreement is subject to rules in addition to those required under § 1.367(a)–8, including special rules for determining the amount of gain subject to the gain recognition agreement. The second condition is that the U.S. transferor must recognize gain realized on the transferred stock or securities attributable to shareholders that are not qualified U.S. persons or do not satisfy the five-percent ownership threshold.

The Treasury Department and the IRS believe that applying the five-percent ownership threshold at the U.S. transferor-level is more consistent with the policy underlying gain recognition agreements. In addition, this change is consistent with the application of § 1.367(b)–4(b)(1) to outbound transfers of foreign stock in a section 361 exchange. See § 1.367(b)–4(b)(1)(iii), *Example 4.*

Other changes to the current final regulations under § 1.367(a)–3(e) conform the rules under § 1.367(a)–3T(e) with other provisions, such as the final regulations under §§ 1.367(a)–7, 1.367(b)–4, 1.1248(f)–1, and 1.1248(f)–2. For example, the regulations provide that § 1.367(a)–3T(e) is applied prior to taking into account gain or deemed dividends under any other provisions of section 367, such as under §§ 1.367(a)–6T, 1.367(a)–7, or 1.367(b)–4.

The other requirements necessary for nonrecognition under the current final regulations of § 1.367(a)–3(e) are generally retained, with certain modifications. For example, if the transferred stock or securities are of a domestic corporation, the reporting requirements under § 1.367(a)–3(c)(6) must be satisfied, in addition to the requirements under § 1.367(a)–3(c)(1)(i), (c)(1)(ii), and (c)(1)(iv).

F. Coordination of Gain Recognition Rules

In connection with final regulations under section 367(a)(5), published elsewhere in this issue of the **Federal Register**, these temporary regulations make a conforming modification to the current temporary regulations under § 1.367(a)–6T by adding a sentence providing that the amount of gain recognized under the branch loss recapture rules is determined prior to determining the amount of any gain recognized under § 1.367(a)–7. Accordingly, any gain recognized under the branch loss recapture rules is taken into account in determining the amount of any gain recognized under § 1.367(a)–7.

G. Reasonable Cause Relief Procedures

The 2008 proposed regulations contain reasonable cause relief provisions in § 1.367(a)–7(e)(2), § 1.1248(f)–3, and § 1.6038B–1(f)(3) (reasonable cause procedures), pursuant to which a taxpayer's failure to timely comply with certain requirements will be deemed not to have occurred if the failure was due to reasonable cause and not willful neglect. These reasonable cause procedures include a provision that a taxpayer will be deemed to have established that the failure to comply was due to reasonable cause and not willful neglect if the taxpayer requesting relief is not notified by the IRS within 120 days of IRS acknowledgement of receipt of the request. The Treasury Department and the IRS do not believe that the IRS's processing time with respect to a relief request should be a determining factor in whether a taxpayer has satisfied its filing obligations. Accordingly, these temporary regulations eliminate the 120-day provision from the reasonable cause procedures. Other than the elimination of the 120-day provision, the reasonable cause procedures are retained in the temporary regulations.

Effective/Applicability Dates

The regulations apply to transactions occurring on or after March 18, 2013.

Effect on Other Documents

The following publication is obsolete as of March 19, 2013:

Notice 2008–10 (2008–1 CB 277).

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in corporate transactions among their controlled corporations. Thus, the number of affected small entities—in whichever of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The IRS and the Treasury Department estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they transfer the stock of a controlled corporation to a related corporation. While a certain number of small entities may engage in such transactions, the IRS and the Treasury Department do not anticipate the number to be substantial. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert B. Williams, Jr., of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * 1.367(a)-3T is also issued under 26 U.S.C. 367(a).

■ **Par. 2.** Section 1.367(a)–3 is amended by:

■ 1. Revising paragraph (d)(2)(vi)(B).

■ 2. Revising paragraph (d)(3) *Examples 6B, 6C, and 9.*

■ 3. Revising paragraph (e).

■ 4. Revising paragraph (g)(1)(vii)(A).
■ 5. Adding paragraph (g)(1)(ix).
■ 6. Adding paragraph (k).

The revisions and additions read as follows:

§ 1.367(a)-3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) [Reserved]. For further guidance, see § 1.367(a)–3T(d)(2)(vi)(B).

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(3) * * *

Example 6B. [Reserved]. For further guidance, see § 1.367(a)–3T(d)(3), *Example 6B.*

Example 6C. [Reserved]. For further guidance, see § 1.367(a)–3T(d)(3), *Example 6C.*

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Example 9. [Reserved]. For further guidance, see § 1.367(a)–3T(d)(3), *Example 9.*

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(e) [Reserved]. For further guidance, see § 1.367–3T(e).

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(g) * * *

(1) * * *

(vii)(A) [Reserved]. For further guidance, see § 1.367–3T(g)(1)(vii)(A).

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(ix) [Reserved]. For further guidance, see § 1.367–3T(g)(1)(ix).

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(k) [Reserved]. For further guidance, see § 1.367–3T(k).

Par. 3. Section 1.367(a)–3T is added to read as follows:

§ 1.367(a)–3T Treatment of transfers of stock or securities to foreign corporations (temporary).

(a) through (d)(2)(vi)(A) [Reserved].—For further guidance, see § 1.367(a)–3(a) through (d)(2)(vi)(A).

(B) *Exceptions.* (*1*) If a transaction is described in paragraph (d)(2)(vi)(A) of this section, section 367(a) and (d) will not apply to the extent a domestic corporation (domestic acquired corporation) transfers assets to a foreign corporation (foreign acquiring corporation) in an asset reorganization, and those assets (re-transferred assets) are transferred to a domestic corporation (domestic controlled corporation) in a controlled asset transfer, provided that each of the following conditions is satisfied:

(*i*) The domestic controlled corporation's adjusted basis in the re-transferred assets is not greater than the domestic acquired corporation's adjusted basis in those assets. For this purpose, any increase in basis in the re-transferred assets that results because the domestic acquired corporation recognized gain or income with respect to the re-transferred assets in the transaction is not taken into account.

(*ii*) The domestic acquired corporation includes a statement described in paragraph (d)(2)(vi)(C) of this section with its U.S. income tax return for the taxable year of the transfer; and

(*iii*) The requirements of paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(6) of this section are satisfied with respect to the indirect transfer of stock in the domestic acquired corporation.

(*2*) Sections 367(a) and (d) shall not apply to transfers described in paragraph (d)(1)(vi) of this section if a U.S. person transfers assets to a foreign corporation in a section 351 exchange, to the extent that such assets are transferred by such foreign corporation to a domestic corporation in another section 351 exchange, but only if the domestic transferee's adjusted basis in the assets is not greater than the adjusted basis that the U.S. person had in such assets. Any increase in adjusted basis in the assets that results because the U.S. person recognized gain or income with respect to such assets in the initial section 351 exchange is not taken into account for purposes of determining whether the domestic transferee's adjusted basis in the assets is not greater than the U.S. person's adjusted basis in such assets. This paragraph (d)(2)(vi)(B)(*2*) will not, however, apply to an exchange described in section 351 that is also an exchange described in section 361(a) or (b). An exchange described in section 351 that is also an exchange described in section 361(a) or (b) is only eligible for the exception in paragraph (d)(2)(vi)(B)(*1*) of this section.

(C) through (d)(3), *Example 6A* [Reserved]. For further guidance, see § 1.367(a)–3(d)(2)(vi)(C) through (d)(3), *Example 6A.*

Example 6B. Section 368(a)(1)(C) reorganization followed by a controlled asset transfer to a domestic controlled corporation—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 6A* of this section, except that R is a domestic corporation.

(ii) *Result.* As in paragraph (d)(3) *Example 6A* of this section, the outbound transfer of the Business A assets to F is not affected by the rules of § 1.367–3(d) and is subject to the general rules under section 367. Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business A assets qualify for the section 367(a)(3) active trade or business exception and are not subject to section 367(a)(1). The Business B and C assets are part of an indirect stock transfer under § 1.367–3(d), but must first be tested under section 367(a) and (d). The Business B assets qualify for the active trade or business exception under section 367(a)(3); the Business C assets do not. However, pursuant to paragraph (d)(2)(vi)(B)(*1*) of this section, the Business B and C assets are not subject to section 367(a) or (d), provided that the basis of the Business B and C assets in the hands of R is not greater than the basis of the assets in the hands of Z, the requirements of paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(6) of this section are satisfied, and Z attaches a statement described in paragraphs (d)(2)(vi)(C) of this section to its U.S. income tax return for the taxable year of the transfer. V also is deemed to make an indirect transfer of Z stock under the rules of paragraph (d) of this section to the extent the assets are transferred to R. To preserve non-recognition treatment, and assuming the other requirements of paragraph (c) of this section are satisfied, V must enter into a gain recognition agreement in the amount of $50, which equals the aggregate gain in the Business B and C assets, because the transfer of those assets by Z was not taxable under section 367(a)(1) and constitute an indirect stock transfer.

Example 6C. Section 368(a)(1)(C) reorganization followed by a controlled asset transfer to a domestic controlled corporation—(i) *Facts.* The facts are the same as in *Example 6B,* except that Z is owned by U.S. individuals, none of whom qualify as five-percent target shareholders with respect to Z within the meaning of paragraph (c)(5)(iii) of this section. The following additional facts are present. No U.S. persons that are either officers or directors of Z own any stock of F immediately after the transfer. F is engaged in an active trade or business outside the United States that satisfies the test set forth in paragraph (c)(3) of this section.

(ii) *Result.* The Business A assets transferred to F are not re-transferred to R and therefore Z's transfer of these assets is not subject to the rules of paragraph (d) of this section. However, gain must be recognized on the transfer of those assets under section 367(a)(1) because the section 367(a)(3) active trade or business exception is inapplicable pursuant to section 367(a)(5) and § 1.367(a)–7(b). The Business B and C assets are part of an indirect stock transfer under paragraph (d) of this section, but must first be tested with respect to Z under section 367(a) and (d), as provided in paragraph (d)(2)(vi) of this section. The transfer of the Business B assets (which otherwise would satisfy the section 367(a)(3) active trade or business exception) generally is subject to section 367(a)(1) pursuant to section 367(a)(5) and § 1.367(a)–7(b). The transfer of the Business C assets generally is subject to section 367(a)(1) because these assets do not qualify for the active trade or business exception under section 367(a)(3). However, pursuant to paragraph (d)(2)(vi)(B) of this section, the transfer of the Business B and C assets is not subject to sections 367(a)(1) and (d), provided the basis of the Business B and C assets in the hands of R is no greater than the basis in the hands of Z and certain other requirements are satisfied. Z may avoid immediate gain recognition under section 367(a) and (d) on the transfers of the Business

B and Business C assets to F if, pursuant to paragraph (d)(2)(vi)(B) of this section, the indirect transfer of Z stock satisfies the requirements of paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(6) of this section, and Z attaches a statement described in paragraph (d)(2)(vi)(C) of this section to its U.S. income tax return for the taxable year of the transfer. In general, the statement must contain a certification that, if F disposes of the stock of R (in a recognition or nonrecognition transaction) and a principal purpose of the transfer is the avoidance of U.S. tax that would have been imposed on Z on the disposition of the Business B and C assets transferred to R, then Z (or F on behalf of Z) will file a return (or amended return as the case may be) recognizing gain ($50), as if, immediately prior to the reorganization, Z transferred the Business B and C assets to a domestic corporation in exchange for stock in a transaction treated as a section 351 exchange and immediately sold such stock to an unrelated party for its fair market value. A transaction is deemed to have a principal purpose of U.S. tax avoidance if F disposes of R stock within two years of the transfer, unless Z (or F on behalf of Z) can rebut the presumption to the satisfaction of the Commissioner. See paragraph (d)(2)(vi)(D)(*2*) of this section. With respect to the indirect transfer of Z stock, assume the requirements of paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iv) of this section are satisfied. Thus, assuming Z attaches the statement described in paragraph (d)(2)(vi)(C) of this section to its U.S. income tax return and satisfies the reporting requirements of paragraph (c)(6) of this section, the transfer of Business B and C assets is not subject to immediate gain recognition under section 367(a) or (d).

Example 7 through *Example 8(C)* [Reserved]. For further guidance, see § 1.367(a)–3(d)(3), *Example 7* through (d)(3), *Example 8(C).*

Example 9. Indirect stock transfer by reason of a controlled asset transfer—(i) *Facts.* The facts are the same as in paragraph (d)(3) *Example 8* of this section, except that R transfers the Business A assets to M, a wholly owned domestic subsidiary of R, in a controlled asset transfer. In addition, V's basis in its Z stock is $90.

(ii) *Result.* Pursuant to paragraph (d)(2)(vi)(B) of this section, sections 367(a) and (d) do not apply to Z's transfer of the Business A assets to R if M's basis in the Business A assets is not greater than the basis of the assets in the hands of Z, the requirements of paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(6) of this section are satisfied, and Z includes a statement described in paragraph (d)(2)(vi)(C) of this section with its U.S. income tax return for the taxable year of the transfer. Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), Z's transfer of the Business B assets to R (which are not re-transferred to M) qualifies for the active trade or business exception under section 367(a)(3). Pursuant to paragraphs (d)(1) and (d)(2)(vii)(A)(*1*) of this section, V is generally deemed to transfer the stock of a foreign corporation to F in a section 354 exchange subject to the rules of paragraphs (b) and (d) of this section, including the requirement that V enter into a gain recognition agreement and comply with the requirements of § 1.367(a)–8. However, pursuant to paragraph (d)(2)(vii)(B), paragraph (d)(2)(vii)(A) of this section does not apply to the extent of the transfer of business A assets by R to M, a domestic corporation. As a result, to the extent of the business A assets transferred by R to M, V is deemed to transfer the stock of Z (a domestic corporation) to F in a section 354 exchange subject to the rules of paragraphs (c) and (d) of this section. Thus, with respect to V's indirect transfer of stock of a domestic corporation to F, such transfer is not subject to gain recognition under section 367(a)(1) if the requirements of paragraph (c) of this section are satisfied, including the requirement that V enter into a gain recognition agreement (separate from the gain recognition agreement described above with respect to the deemed transfer of stock of a foreign corporation to F) and comply with the requirements of § 1.367(a)–8. Under paragraphs (d)(2)(i) and (d)(2)(ii) of this section, the transferee foreign corporation is F and the transferred corporation is R (with respect to the transfer of stock of a foreign corporation) and M (with respect to the transfer of stock of a domestic corporation). Pursuant to paragraph (d)(2)(iv) of this section, a disposition by F of the stock of R would trigger both gain recognition agreements. In addition, a disposition by R of the stock of M would trigger the gain recognition agreement filed with respect to the transfer of the stock of a domestic corporation. To determine whether there is a triggering event under § 1.367(a)–8(j)(2)(i) for the gain recognition agreement filed with respect to the transfer of stock of the domestic corporation, the Business A assets in M must be considered. To determine whether there is such a triggering event for the gain recognition agreement filed with respect to the transfer of stock of the foreign corporation, the Business B assets in R must be considered.

Example 10 through *Example 16* [Reserved]. For further guidance, see § 1.367(a)–3(d)(3), *Example 10* through *Example 16.*

(e) *Transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange*—(1) *Overview*—(i) *Scope and definitions.* This paragraph (e) applies to a domestic corporation (U.S. transferor) that transfers stock or securities of a domestic or foreign corporation (transferred stock or securities) to a foreign corporation (foreign acquiring corporation) in a section 361 exchange. Except as otherwise provided in this paragraph (e), paragraphs (b) and (c) of this section do not apply to the U.S. transferor's transfer of the transferred stock or securities in the section 361 exchange. For purposes of this paragraph (e), the definitions of *control group, control group member,* and *non-control group member* in § 1.367(a)–7(f)(1), *ownership interest percentage* in § 1.367(a)–7(f)(7), *section 361 exchange* in § 1.367(a)–7(f)(8), and *U.S. transferor shareholder* in § 1.367(a)–7(f)(13), shall apply.

(ii) *Ordering rules.* Except as otherwise provided, this paragraph (e) shall apply to the transfer of the transferred stock or securities in the section 361 exchange prior to the application of any other provision of section 367 to such transfer. Furthermore, any gain recognized (including gain treated as a deemed dividend pursuant to section 1248(a)) by the U.S. transferor under this paragraph (e) shall be taken into account for purposes of applying any other provision of section 367 (including §§ 1.367(a)–6T, 1.367(a)–7, and 1.367(b)–4) to the transfer of the transferred stock or securities.

(2) *General rule.* Except as provided in paragraph (e)(3) of this section, the transfer by the U.S. transferor of the transferred stock or securities to the foreign acquiring corporation in the section 361 exchange shall be subject to section 367(a)(1), and therefore the U.S. transferor shall recognize any gain (but not loss) realized with respect to the transferred stock or securities. Realized gain is recognized pursuant to the prior sentence notwithstanding that the transfer is described in any other nonrecognition provision enumerated in section 367(a)(1) (such as section 351 or 354).

(3) *Exception.* The general rule of paragraph (e)(2) of this section shall not apply if the conditions of paragraphs (e)(3)(i), (e)(3)(ii), and (e)(3)(iii) of this section are satisfied.

(i) The conditions set forth in § 1.367(a)–7(c) are satisfied with respect to the section 361 exchange.

(ii) If the transferred stock or securities are of a domestic corporation, the U.S. target company (as defined in paragraph (c)(1) of this section) complies with the reporting requirements of paragraph (c)(6) of this section, and the conditions of paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iv) of this section are satisfied with respect to the transferred stock or securities.

(iii) If the U.S. transferor owns (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer of the transferred stock or securities in the section 361 exchange, then the conditions set forth in paragraphs (e)(3)(iii)(A), (e)(3)(iii)(B), and (e)(3)(iii)(C) of this section are satisfied.

(A) Except as otherwise provided in this paragraph (e)(3)(iii)(A), each U.S. transferor shareholder that is a qualified U.S. person (as defined in paragraph (e)(6)(vii) of this section) owning (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the reorganization enters into a gain recognition agreement that satisfies the conditions of paragraph (e)(6) of this section and § 1.367(a)–8. A U.S. transferor shareholder is not required to enter into a gain recognition agreement pursuant to this paragraph if the amount of gain that would be subject to the gain recognition agreement (as determined under paragraph (e)(6)(i) of this section) is zero.

(B) With respect to non-control group members that are not described in paragraph (e)(3)(iii)(A) of this section, the U.S. transferor recognizes gain equal to the product of the aggregate ownership interest percentage of such non-control group members multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities.

(C) With respect to each control group member that is not described in paragraph (e)(3)(iii)(A) of this section, the U.S. transferor recognizes gain equal to the product of the ownership interest percentage of such control group member multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities.

(4) *Application of certain rules at U.S. transferor-level.* For purposes of paragraphs (c)(5)(iii), (e)(3)(ii), and (e)(3)(iii) of this section, ownership of the stock of the transferee foreign corporation is determined by reference to stock owned by the U.S. transferor immediately after the transfer of the transferred stock or securities to the foreign acquiring corporation in the section 361 exchange, but prior to and without taking into account the U.S. transferor's distribution under section 361(c)(1) of the stock received.

(5) *Transferee foreign corporation*—(i) *General rule.* Except as provided in paragraph (e)(5)(ii) of this section, the transferee foreign corporation for purposes of applying paragraph (e) of this section and § 1.367(a)–8 shall be the foreign corporation that issues stock or securities to the U.S. transferor in the section 361 exchange.

(ii) *Special rule for triangular asset reorganizations involving the receipt of stock or securities of a domestic corporation.* In the case of a triangular asset reorganization described in §§ 1.358–(6)(b)(2)(i), (b)(2)(ii) or (b)(2)(iii), or § 1.358–6(b)(2)(v) (triangular asset reorganization) in which the U.S. transferor receives stock or securities of a domestic corporation that is in control (within the meaning of section 368(c)) of the foreign acquiring corporation, the transferee foreign corporation shall be the foreign acquiring corporation.

(6) *Special requirements for gain recognition agreements.* A gain recognition agreement filed by a U.S. transferor shareholder pursuant to paragraph (e)(3)(iii)(A) of this section is, in addition to the terms and conditions of § 1.367(a)–8, subject to the conditions of this section (e)(6).

(i) The amount of gain subject to the gain recognition agreement shall equal the product of the ownership interest percentage of the U.S. transferor shareholder multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities, reduced (but not below zero) by the sum of the amounts described in paragraphs (e)(6)(i)(A), (e)(6)(i)(B), (e)(6)(i)(C), and (e)(6)(i)(D) of this section.

(A) Gain recognized by the U.S. transferor with respect to the transferred stock or securities under section 367(a)(1) (including any portion treated as a deemed dividend under section 1248(a)) that is attributable to such U.S. transferor shareholder pursuant to § 1.367(a)–7(c)(2) or § 1.367(a)–7(e)(5).

(B) A deemed dividend included in the income of the U.S. transferor with respect to the transferred stock under § 1.367(b)–4(b)(1)(i) that is attributable to such U.S. transferor shareholder pursuant to § 1.367(a)–(e)(4).

(C) If the U.S. transferor shareholder is subject to an election under § 1.1248(f)–2(c)(1), a deemed dividend included in the income of the U.S. transferor pursuant to § 1.1248(f)–2(c)(3) that is attributable to the U.S. transferor shareholder.

(D) If the U.S. transferor shareholder is not subject to an election under § 1.1248(f)–2(c)(1), the hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the stock of each foreign corporation transferred in the section 361 exchange attributable to the U.S. transferor shareholder.

(ii) The gain recognition agreement shall include the election described in § 1.367(a)–8(c)(2)(vi).

(iii) The gain recognition agreement shall designate the U.S. transferor shareholder as the U.S. transferor for purposes of § 1.367(a)–8.

(iv) If the transfer of the transferred stock or securities in the section 361 exchange is pursuant to a triangular asset reorganization, the gain recognition agreement shall include appropriate provisions that are consistent with the principles of § 1.367(a)–8 for gain recognition agreements involving multiple parties. See § 1.367(a)–8(j)(9).

(v) The gain recognition agreement shall not be eligible for termination upon a taxable disposition pursuant to § 1.367(a)–8(o)(1) unless the value of the stock or securities received by the U.S. transferor shareholder in exchange for the stock or securities of the U.S. transferor under section 354 or 356 is at least equal to the amount of gain subject to the gain recognition agreement filed by such U.S. transferor shareholder.

(vi) Except as otherwise provided in this paragraph (e)(6)(vi), if gain is subsequently recognized by the U.S. transferor shareholder under the terms of the gain recognition agreement pursuant to § 1.367(a)–8(c)(1)(i), the increase in stock basis provided under § 1.367(a)–8(c)(4)(i) with respect to the stock received by the U.S. transferor shareholder shall not exceed the amount of the stock basis adjustment made pursuant to § 1.367(a)–7(c)(3) with respect to the stock received by the U.S. transferor shareholder. This paragraph (e)(6)(vi) shall not apply if the U.S. transferor shareholder and the U.S. transferor are members of the same consolidated group at the time of the reorganization.

(vii) For purposes of this section, a *qualified U.S. person* means a U.S. person, as defined in § 1.367(a)–1T(d)(1), but for this purpose does not include domestic partnerships, regulated investment companies (as defined in section 851(a)), real estate investment trusts (as defined in section 856(a)), and S corporations (as defined in section 1361(a)).

(7) *Gain subject to section 1248(a).* If the U.S. transferor recognizes gain under paragraphs (e)(3)(iii)(B) or (e)(3)(iii)(C) of this section with respect to transferred stock that is stock in a foreign corporation to which section 1248(a) applies, then the portion of such gain treated as a deemed dividend under section 1248(a) is the product of the amount of the gain multiplied by the section 1248(a) ratio. The section 1248(a) ratio is the ratio of the amount that would be treated as a deemed dividend under section 1248(a) if all the gain in the transferred stock were recognized to the amount of gain realized in all the transferred stock.

(8) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section. Except as otherwise indicated: US1, US2, and UST are

domestic corporations that are not members of a consolidated group; X is a United States citizen; US1, US2, and X are unrelated parties; CFC1, CFC2, and FA are foreign corporations; each corporation described herein has a single class of stock issued and outstanding and a tax year ending on December 31; the section 1248 amount (within the meaning of § 1.367(b)–2(c)) with respect to the stock of CFC1 and CFC2 is zero; Asset A is section 367(a) property that, but for the application of section 367(a)(5), would qualify for the active foreign trade or business exception under § 1.367(a)–2T; the requirements of § 1.367(a)–7(c)(2) through 1.367(a)–7(c)(5) are satisfied with respect to a section 361 exchange; the provisions of § 1.367(a)–6T (regarding branch loss recapture) are not applicable; and none of the foreign corporations in the examples is a surrogate foreign corporation (within the meaning of section 7874) as a result of the transactions described in the examples because one or more of the conditions of section 7874(a)(2)(B) is not satisfied.

Example 1. U.S. transferor owns less than 5% of stock of transferee foreign corporation. (i) *Facts.* US1, US2, and X own 80%, 5%, and 15%, respectively, of the stock of UST with a fair market value of $160x, $10x, and $30x, respectively. UST has two assets, Asset A and 100% of the stock of CFC1. UST has no liabilities. Asset A has a $150x basis and $100x fair market value (as defined in § 1.367(a)–7(f)(3)), and the CFC1 stock has a $0x basis and $100x fair market value. UST transfers Asset A and the CFC1 stock to FA solely in exchange for $200x of FA voting stock in a reorganization described in section 368(a)(1)(C). UST's transfer of Asset A and the CFC1 stock to FA qualifies as a section 361 exchange. UST distributes the FA stock received in the section 361 exchange to US1, US2, and X pursuant to the plan of reorganization, and liquidates. US1 receives $160x of FA stock, US2 receives $10x of FA stock, and X receives $30x of FA stock in exchange for the UST stock. Immediately after the transfer of Asset A and the CFC1 stock to FA in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST does not own (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of FA.

(ii) *Result.* (A) UST's transfer of the CFC1 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (e)(1)(ii) of this section. Pursuant to the general rule of paragraph (e)(2) of this section, UST must recognize the gain realized of $100x on the transfer of the CFC1 stock (computed as the excess of the $100x fair market value over the $0x basis) unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. In this case, the requirements of paragraph (e)(3) of this section are satisfied. First, the requirement of paragraph (e)(3)(i) of this section is satisfied because the control requirement of § 1.367(a)–7(c)(1) is satisfied, and a stated assumption is that the requirements of §§ 1.367(a)–7(c)(2) through 1.367(a)–7(c)(5) will be satisfied. The control requirement is satisfied because US1 and US2, each a control group member, own in the aggregate 85% of the stock of UST immediately before the reorganization. Second, the requirement of paragraph (e)(3)(ii) of this section is not applicable because that paragraph applies to the transfer of stock of a domestic corporation and CFC1 is a foreign corporation. Third, paragraph (e)(3)(iii) of this section is not applicable because immediately after the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST does not own (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or the total value of the stock of FA. See paragraph (e)(4) of this section. Accordingly, UST does not recognize the $100x of gain realized in the CFC1 stock pursuant to this section.

(B) In order to meet the requirements of § 1.367(a)–7(c)(2)(i), UST must recognize gain equal to the portion of the inside gain (as defined in § 1.367(a)–7(f)(5)) attributable to non-control group members (X), or $7.50x. The $7.50x of gain is computed as the product of the inside gain ($50x) multiplied by X's ownership interest percentage in UST (15%). Pursuant to § 1.367(a)–7(f)(5), the $50x of inside gain is the amount by which the aggregate fair market value ($200x) of the section 367(a) property (as defined in § 1.367(a)–7(f)(10), or Asset A and the CFC1 stock) exceeds the sum of the inside basis ($150x) of such property and the product of the section 367(a) percentage (as defined in § 1.367(a)–7(f)(9), or 100%) multiplied by UST's deductible liabilities (as defined in § 1.367(a)–7(f)(2), or $0x). Pursuant to § 1.367(a)–7(f)(4), the inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($150x), increased by any gain or deemed dividends recognized by UST with respect to the section 367(a) property under section 367 ($0x), but not including the $7.50x of gain recognized by UST under § 1.367(a)–7(c)(2)(i). Pursuant to § 1.367(a)–7(e)(1), the $7.50x of gain recognized by UST is treated as recognized with respect to the CFC1 stock and Asset A in proportion to the amount of gain realized in each. However, because there is no gain realized by UST with respect to Asset A, all $7.50x of the gain is allocated to the CFC1 stock. Furthermore, FA's basis in the CFC1 stock, as determined under section 362 is increased by the $7.50x of gain recognized by UST. See § 1.367(a)–1(b)(4)(i)(B).

(C) The requirement to recognize gain under § 1.367(a)–7(c)(2)(ii) is not applicable because the portion of the inside gain attributable to US1 and US2 (control group members) can be preserved in the stock received by each such shareholder. As described in paragraph (ii)(B) of this *Example 1,* the inside gain is $50x. US1's attributable inside gain of $40x (equal to the product of $50x inside gain multiplied by US1's 80% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*)) does not exceed $160x (equal to the product of the section 367(a) percentage of 100% multiplied by $160x fair market value of FA stock received by US1). Similarly, US2's attributable inside gain of $2.50x (equal to the product of $50x inside gain multiplied by US2's 5% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*))) does not exceed $10x (equal to the product of the section 367(a) percentage of 100% multiplied by $10x fair market value of FA stock received by US2).

(D) Each control group member (US1 and US2) must separately compute any required adjustment to stock basis under § 1.367(a)–7(c)(3).

Example 2. U.S. transferor owns 5% or more of the stock of the transferee foreign corporation. (i) *Facts.* The facts are the same as in *Example 1,* except that immediately after the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST owns (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or value of the stock of FA. Furthermore, immediately after the reorganization, US1 and X (but not US2) each own (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or value of the stock of FA.

(ii) *Result.* (A) As is the case with *Example 1,* UST's transfer of the CFC1 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (e)(1)(ii) of this section. In addition, UST must recognize the gain realized of $100x on the transfer of the CFC1 stock (computed as the excess of the $100x fair market value over the $0x basis) unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. For the same reasons provided in *Example 1,* the requirement in paragraph (e)(3)(i) of this section is satisfied and the requirement of paragraph (e)(3)(ii) of this section is not applicable.

(B) Unlike *Example 1,* however, UST owns 5% or more of the voting power or value of the stock of FA immediately after the transfer of the CFC1 stock in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock under section 361(c)(1). As a result, paragraph (e)(3)(iii) of this section is applicable to the section 361 exchange of the CFC1 stock. Accordingly, in order to meet the requirements of paragraph (e)(3)(iii)(A) of this section US1 and X must enter into gain recognition agreements that satisfy the requirements of paragraph (e)(6) of this

section and § 1.367(a)–8. See paragraph (ii)(G) of this *Example 2* for the computation of the amount of gain subject to each gain recognition agreement.

(C) In order to meet the requirements of paragraph (e)(3)(iii)(C) of this section, UST must recognize $5x of gain attributable to US2 (computed as the product of the $100x of gain realized with respect to the transfer of the CFC1 stock multiplied by the 5% ownership interest percentage of US2). The $5x of gain recognized is not included in the computation of inside basis (see § 1.367(a)–7(f)(4)(i)), but reduces (but not below zero) the amount of gain recognized by UST pursuant to § 1.367(a)–7(c)(2)(ii) that is attributable to US2. Furthermore, FA's basis in the CFC1 stock as determined under section 362 is increased for the $5x of gain recognized. See § 1.367(a)–1(b)(4)(i)(B). Assuming US1 and X enter into the gain recognition agreements described in paragraph (ii)(B) of this *Example* 2, and UST recognizes the $5x of gain described in this example, the requirements of paragraph (e)(3) are satisfied and, accordingly, UST does not recognize the remaining $95x of gain realized in the CFC1 stock pursuant to this section.

(D) As described in paragraph (ii)(B) of *Example 1,* UST must recognize $7.50x of gain pursuant to § 1.367(a)–7(c)(2)(i), the amount of the $50x of inside gain attributable to X. Pursuant to § 1.367(a)–7(e)(1), the $7.50x of gain recognized by UST is treated as recognized with respect to the CFC1 stock and Asset A in proportion to the amount of gain realized in each. However, because there is no gain realized by UST with respect to Asset A, all $7.50x of the gain is allocated to the CFC1 stock. Furthermore, FA's basis in the CFC1 stock as determined under section 362 is increased for the $7.50x of gain recognized. See § 1.367(a)–1(b)(4)(i)(B).

(E) As described in paragraph (ii)(C) of *Example 1,* the requirement to recognize gain pursuant to § 1.367(a)–7(c)(2)(ii) is not applicable because the attributable inside gain of US1 and US2 can be preserved in the stock received by each shareholder. However, if UST were required to recognize gain pursuant to § 1.367(a)–7(c)(2)(ii) for inside gain attributable to US2 (for example, if US2 received solely cash rather than FA stock in the reorganization), the amount of such gain would be reduced (but not below zero) by the amount of gain recognized by UST pursuant to paragraph (e)(3)(iii)(C) of this section that is attributable to US2 (computed as $5x in paragraph (ii)(C) of this *Example 2*). See § 1.367(a)–7(c)(2)(ii)(A)(*1*).

(F) Each control group member (US1 and US2) must separately compute any required adjustment to stock basis under § 1.367(a)–7(c)(3).

(G) The amount of gain subject to the gain recognition agreement filed by each of US1 and X is determined pursuant to paragraph (e)(6)(i) of this section. With respect to US1, the amount of gain subject to the gain recognition agreement is $80x. The $80x is computed as the product of US1's ownership interest percentage (80%) multiplied by the gain realized by UST in the CFC1 stock as determined prior to taking into account the application of any other provision of section 367 ($100x), reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (e)(6)(i)(D) of this section attributable to US1 ($0x). With respect to X, the amount of gain subject to the gain recognition agreement is $7.50x. The $7.50x is computed as the product of X's ownership interest percentage (15%) multiplied by the gain realized by UST in the CFC1 stock as determined prior to taking into account the application of any other provision of section 367 ($100x), reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (e)(6)(i)(D) of this section attributable to X ($7.50x, as computed in paragraph (ii)(D) of this *Example 2*).

(H) In order the meet the requirements of paragraph (e)(6)(ii) of this section, each gain recognition agreement must include the election described in § 1.367(a)–8(c)(2)(vi). Furthermore, pursuant to paragraph (e)(6)(iii) of this section, US1 and X must be designated as the U.S. transferor on their respective gain recognition agreements for purposes of § 1.367(a)–8.

Example 3. U.S. transferor owns 5% or more of the stock of the transferee foreign corporation; interaction with section 1248(f). (i) *Facts.* US1, US2, and X own 50%, 30%, and 20%, respectively, of the stock of UST. The UST stock owned by US1 has a $180x basis and $200x fair market value; the UST stock owned by US2 has a $100x basis and $120x fair market value; and the UST stock owned by X has a $80x fair market value. UST owns Asset A, and all the stock of CFC1 and CFC2. UST has no liabilities. Asset A has a $10x basis and $200x fair market value. The CFC1 stock is a single block of stock (as defined in § 1.1248(f)–1(c)(2)) with a $20x basis, $40x fair market value, and $30x of earnings and profits attributable to it for purposes of section 1248 (with the result that the section 1248 amount (as defined in § 1.1248(f)–1(c)(9)) is $20x). The CFC2 stock is also a single block of stock with a $30x basis, $160x fair market value, and $150x of earnings and profits attributable to it for purposes of section 1248 (with the result that the section 1248 amount is $130x). On December 31, Year 3, in a reorganization described in section 368(a)(1)(D), UST transfers the CFC1 stock, CFC2 stock, and Asset A to FA in exchange for 60 shares of FA stock with a $400x fair market value. UST's transfer of the CFC1 stock, CFC2 stock, and Asset A to FA in exchange for the 60 shares of FA stock qualifies as a section 361 exchange. UST distributes the FA stock received in the section 361 exchange to US1, US2, and X pursuant to section 361(c)(1). US1, US2, and X exchange their UST stock for 30, 18, and 12 shares, respectively, of FA stock pursuant to section 354. Immediately after the reorganization, FA has 100 shares of stock outstanding, and US1 and US2 are each a section 1248 shareholder with respect to FA.

(ii) *Result.* (A) UST's transfer of the CFC1 stock and CFC2 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock and CFC2 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (e)(1)(ii) of this section. Pursuant to the general rule of paragraph (e)(2) of this section, UST must recognize the gain realized of $20x on the transfer of the CFC1 stock (the excess of $40x fair market value over $20x basis) and the gain realized of $130x on the transfer of the CFC2 stock (the excess of $160x fair market value over $30x basis), subject to the application of section 1248(a), unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. In this case, the requirement of paragraph (e)(3)(i) of this section is satisfied because the control requirement of § 1.367(a)–7(c)(1) is satisfied, and a stated assumption is that the requirements of §§ 1.367(a)–7(c)(2) through 1.367(a)–7(c)(5) will be satisfied. The control requirement is satisfied because US1 and US2, each a control group member, own in the aggregate 80% of the UST stock immediately before the reorganization. The requirement of paragraph (e)(3)(ii) of this section is not applicable because that paragraph applies to the transfer of stock of a domestic corporation, and CFC1 and CFC2 are foreign corporations. UST owns 5% or more of the total voting power or value of the stock of FA (60%, or 60 of the 100 shares of FA stock outstanding) immediately after the transfer of the CFC1 stock and CFC2 stock in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock under section 361(c)(1). As a result, paragraph (e)(3)(iii) of this section is applicable to the section 361 exchange of the CFC1 stock and CFC2 stock. US1, US2, and X each own (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or value of the FA stock immediately after the reorganization, or 30%, 18%, and 12%, respectively. Accordingly, in order to meet the requirements of paragraph (e)(3)(iii)(A) of this section, US1 and US2 must enter into gain recognition agreements with respect to the CFC1 stock and CFC2 stock that satisfy the requirements of paragraph (e)(6) of this section and § 1.367(a)–8. X is not required to enter into a gain recognition agreement because the amount of gain that would be subject to the gain recognition agreement is zero. See paragraph (ii)(J) of this *Example 3* for the computation of the amount of gain subject to each gain recognition agreement. Assuming US1 and US2 enter into the gain recognitions agreements described above, the requirements of paragraph (e)(3) are satisfied and accordingly, UST does not recognize the gain realized of $20x in the stock of CFC1 or the gain realized of $130x in the stock of CFC2 pursuant to this section.

(B) UST's transfer of the CFC1 stock and CFC2 stock to FA pursuant to the section 361 exchange is subject to § 1.367(b)–4(b)(1)(i), which applies prior to the application of § 1.367(a)–7(c). See paragraph (e)(1) of this section. UST (the exchanging shareholder) is a U.S. person and a section 1248 shareholder with respect to CFC1 and CFC2 (each a foreign acquired corporation). However, UST is not required to include in income as a deemed dividend the section 1248 amount with respect to the CFC1 stock ($20x) or CFC2 stock ($130x) under § 1.367(b)–4(b)(1)(i) because, immediately after UST's section 361 exchange of the CFC1 stock and

CFC2 stock for FA stock (and before the distribution of the FA stock to US1, US2, and X under section 361(c)(1), FA, CFC1, and CFC2 are controlled foreign corporations as to which UST is a section 1248 shareholder. See § 1.367(b)–4(b)(1)(ii)(A). However, if UST were required to include in income as a deemed dividend the section 1248 amount with respect to the CFC1 stock or CFC2 stock (for example, if FA were not a controlled foreign corporation), such deemed dividend would be taken into account prior to the application of § 1.367(a)–7(c). Furthermore, because US1, US2, and X are all persons described in paragraph (e)(3)(iii)(A) of this section, any such deemed dividend would increase inside basis. See § 1.367(a)–7(f)(4).

(C) In order to meet the requirements of § 1.367(a)–7(c)(2)(i), UST must recognize gain equal to the portion of the inside gain attributable to non-control group members (X), or $68x. The $68x of gain is computed as the product of the inside gain ($340x) multiplied by X's ownership interest percentage in UST (20%), reduced (but not below zero) by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(i)(A) through (c)(2)(i)(C). Pursuant to § 1.367(a)–7(f)(5), the $340x of inside gain is the amount by which the aggregate fair market value ($400x) of the section 367(a) property (Asset A, CFC1 stock, and CFC2 stock) exceeds the sum of the inside basis ($60x) and $0x (the product of the section 367(a) percentage (100%) multiplied by UST's deductible liabilities ($0x)). Pursuant to § 1.367(a)–7(f)(4), the inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($60x), increased by any gain or deemed dividends recognized by UST with respect to the section 367(a) property under section 367 ($0x), but not including the $68x of gain recognized by UST under § 1.367(a)–7(c)(2)(i). Under § 1.367(a)–7(e)(1), the $68x gain recognized is treated as being with respect to the CFC1 stock, CFC2 stock, and Asset A in proportion to the amount of gain realized by UST on the transfer of the property. The amount treated as recognized with respect to the CFC1 stock is $4x ($68x gain multiplied by $20x/$340x). The amount treated as recognized with respect to the CFC2 stock is $26x ($68x gain multiplied by $130x/$340x). The amount treated as recognized with respect to Asset A is $38x ($68x gain multiplied by $190x/$340x). Under section 1248(a), UST must include in gross income as a dividend the $4x gain recognized with respect to the CFC1 stock and the $26x gain recognized with respect to CFC2 stock. Furthermore, FA's basis in the CFC1 stock, CFC2 stock, and Asset A, as determined under section 362, is increased by the amount of gain recognized by UST with respect to such property. See § 1.367(a)–1(b)(4)(i)(B). Thus, FA's basis in the CFC1 stock is $24x ($20x increased by $4x of gain), the CFC2 stock is $56x ($30x increased by $26x of gain), and Asset A is $48x ($10x increased by $38x of gain).

(D) The requirement to recognize gain under § 1.367(a)–7(c)(2)(ii) is not applicable because the portion of the inside gain attributable to US1 and US2 (control group members) can be preserved in the stock received by each such shareholder. As described in paragraph (ii)(C) of this *Example 3,* the inside gain is $340x. US1's attributable inside gain of $170x (equal to the product of $340x inside gain multiplied by US1's 50% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*)) does not exceed $200x (equal to the product of the section 367(a) percentage of 100% multiplied by $200x fair market value of FA stock received by US1). Similarly, US2's attributable inside gain of $102x (equal to the product of $340x inside gain multiplied by US2's 30% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (c)(2)(ii)(A)(*3*)) does not exceed $120x (equal to the product of the section 367(a) percentage of 100% multiplied by $120x fair market value of FA stock received by US2).

(E) Each control group member (US1 and US2) separately computes any required adjustment to stock basis under § 1.367(a)–7(c)(3). US1's section 358 basis in the FA stock received of $180x (equal to US1's basis in the UST stock exchanged) is reduced to preserve the attributable inside gain with respect to US1, less any gain recognized with respect to US1 under § 1.367(a)–7(c)(2)(ii). Because UST does not recognize gain on the section 361 exchange with respect to US1 under § 1.367(a)–7(c)(2)(ii) (as determined in paragraph (ii)(D) of this *Example 3*), the attributable inside gain of $170x with respect to US1 is not reduced under § 1.367(a)–7(c)(3)(i)(A). US1's outside gain (as defined in § 1.367(a)–7(f)(6)) in the FA stock is $20x, the product of the section 367(a) percentage (100%) multiplied by the $20x gain (equal to the difference between $200x fair market value and $180x section 358 basis in the FA stock). Thus, US1's $180x section 358 basis in the FA stock must be reduced by $150x (the excess of $170x attributable inside gain, reduced by $0x, over $20x outside gain) to $30x. Similarly, US2's section 358 basis in the FA stock received of $100x (equal to US2's basis in the UST stock exchanged) is reduced to preserve the attributable inside gain with respect to US2, less any gain recognized with respect to US2 under § 1.367(a)–7(c)(2)(ii). Because UST does not recognize gain on the section 361 exchange with respect to US2 under § 1.367(a)–7(c)(2)(ii) (as determined in paragraph (ii)(D) of this *Example 3*), the attributable inside gain of $102x with respect to US2 is not reduced under § 1.367(a)–7(c)(3)(i)(A). US2's outside gain in the FA stock is $20x, the product of the section 367(a) percentage (100%) multiplied by the $20x gain (equal to the difference between $120x fair market value and $100x section 358 basis in FA stock). Thus, US2's $100x section 358 basis in the FA stock must be reduced by $82x (the excess of $102x attributable inside gain, reduced by $0x, over $20x outside gain) to $18x.

(F) UST's distribution of the FA stock to US1, US2, and X under section 361(c)(1) (new stock distribution) is subject to § 1.1248(f)–1(b)(3). Except as provided in § 1.1248(f)–2(c), under § 1.1248(f)–1(b)(3) UST must include in gross income as a dividend the total section 1248(f) amount (as defined in § 1.1248(f)–1(c)(14)). The total section 1248(f) amount is $120x, the sum of the section 1248(f) amount (as defined in § 1.1248(f)–1(c)(10)) with respect to the CFC1 stock ($16x) and CFC2 stock ($104x). The $16x section 1248(f) amount with respect to the CFC1 stock is the amount that UST would have included in income as a dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($20x), reduced by the amount of gain recognized by UST under § 1.367(a)–7(c)(2) allocable to the CFC1 stock and treated as a dividend under section 1248(a) ($4x, as described in paragraph (ii)(C) of this *Example 3*). Similarly, the section 1248(f) amount with respect to the CFC2 stock is $104x ($130x reduced by $26x).

(G) If, however, UST along with US1 and US2 (each a section 1248 shareholder of FA immediately after the distribution) elect to apply the provisions of § 1.1248(f)–2(c) (as provided in § 1.1248(f)–2(c)(1)), the amount that UST is required to include in income as a dividend under § 1.1248(f)–1(b)(3) ($120x total section 1248(f) amount as computed in paragraph (ii)(F) of this *Example 3*) is reduced by the sum of the portions of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock that is attributable (under the rules of § 1.1248(f)–2(d)) to the FA stock distributed to US1 and US2. Assume that the election is made to apply § 1.1248(f)–2(c).

(*1*) Under § 1.1248(f)–2(d)(1), the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributed to the 30 shares of FA stock distributed to US1 is equal to the hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the CFC1 stock that is attributable to US1's ownership interest percentage in UST. US1's hypothetical section 1248 amount with respect to the CFC1 stock is the amount that UST would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($20x) and that would be attributable to US1's ownership interest percentage in UST (50%), reduced by the amount of gain recognized by UST under § 1.367(a)–7(c)(2) attributable to US1 and allocable to the CFC1 stock, but only to the extent such gain is treated as a dividend under section 1248(a) ($0x, as described in paragraphs (ii)(C) and (D) of this *Example 3*). Thus, US1's hypothetical section 1248 amount with respect to the CFC1 stock is $10x ($20x multiplied by 50%, reduced by $0x). The $10x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 30 shares of FA stock distributed to US1, and the attributable share amount (as defined in § 1.1248(f)–2(d)(1)) is $.33x ($10x/30 shares). Similarly, US1's hypothetical section 1248 amount with respect to the CFC2 stock is $65x ($130x multiplied by 50%, reduced by $0x), and the attributable share amount is $2.17x ($65x/30 shares). Similarly, US2's hypothetical section 1248 amount with respect to the CFC1 stock is $6x ($20x multiplied by 30%, reduced by $0x), and the attributable share amount is also $.33x ($6x/18 shares). Finally, US2's

hypothetical section 1248 amount with respect to the CFC2 stock is $39x ($130x multiplied by 30%, reduced by $0x), and the attributable share amount is also $2.17x ($39x/18 shares). Thus, the sum of the portion of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock attributable to shares of stock of FA distributed to US1 and US2 is $120x ($10x plus $65x plus $6x plus $39x).

(*2*) If the shares of FA stock are divided into portions, § 1.1248(f)–2(d)(2) applies to attribute the attributable share amount to portions of shares of FA stock distributed to US1 and US2. Under § 1.1248(f)–2(c)(2) each share of FA stock received by US1 (30 shares) and US2 (18 shares) is divided into three portions, one attributable to the single block of stock of CFC1, one attributable to the single block of stock of CFC2, and one attributable to Asset A. Thus, the attributable share amount of $.33x with respect to the CFC1 stock is attributed to the portion of each of the 30 shares and 18 shares of FA stock received by US1 and US2, respectively, that relates to the CFC1 stock. Similarly, the attributable share amount of $2.17x with respect to the CFC2 stock is attributed to the portion of each of the 30 shares and 18 shares of FA stock received by US1 and US2, respectively, that relates to the CFC2 stock.

(*3*) The total section 1248(f) amount ($120x) that UST is otherwise required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is reduced by $120x, the sum of the portions of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock that are attributable to the shares of FA stock distributed to US1 and US2. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is $0x ($120x reduced by $120x).

(H) As stated in paragraph (ii)(G)(*2*) of this *Example 3,* under § 1.1248(f)–2(c)(2) each share of FA stock received by US1 (30 shares) and US2 (18 shares) is divided into three portions, one attributable to the CFC1 stock, one attributable to the CFC2 stock, and one attributable to Asset A. Under § 1.1248(f)–2(c)(4)(i), the basis of each portion is the product of US1's and US2's section 358 basis in the share of FA stock multiplied by the ratio of the section 362 basis of the property (CFC1 stock, CFC2 stock, or Asset A, as applicable) received by FA in the section 361 exchange to which the portion relates, to the aggregate section 362 basis of all property received by FA in the section 361 exchange. Under § 1.1248(f)–2(c)(4)(ii), the fair market value of each portion is the product of the fair market value of the share of FA stock multiplied by the ratio of the fair market value of the property (CFC1 stock, CFC2 stock, or Asset A, as applicable) to which the portion relates, to the aggregate fair market value of all property received by FA in the section 361 exchange. The section 362 basis of the CFC1 stock, CFC2 stock, and Asset A is $24x, $56x, and $48x, respectively, for an aggregate section 362 basis of $128x. See paragraph (ii)(C) of this *Example 3.* The fair market value of the CFC1 stock, CFC2 stock, and Asset A is $40x, $160x, and $200x, for an aggregate fair market value of $400x. Furthermore, US1's 30 shares of FA stock have an aggregate fair market value of $200x and section 358 basis of $30x (resulting in aggregate gain of $170x), and US2's 18 shares of FA stock have an aggregate fair market value of $120x and section 358 basis of $18x (resulting in aggregate gain of $102x). See paragraph (ii)(E) of this *Example 3.*

(*1*) With respect to US1's 30 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $5.63x ($30x multiplied by $24x/$128x) and fair market value of $20x ($200x multiplied by $40x/$400x), resulting in aggregate gain in such portions of $14.38x (or $.48x gain in each such portion of the 30 shares). The portions attributable to the CFC2 stock have an aggregate basis of $13.13x ($30x multiplied by $56x/$128x) and fair market value of $80x ($200x multiplied by $160x/$400x), resulting in aggregate gain in such portions of $66.88x (or $2.23x in each such portion of the 30 shares). The portions attributable to Asset A have an aggregate basis of $11.25x ($30x multiplied by $48x/$128x) and fair market value of $100x ($200x multiplied by $200x/$400x), resulting in aggregate gain in such portions of $88.75x (or $2.96x in each such portion of the 30 shares). Thus, the aggregate gain in all the portions of the 30 shares is $170x ($14.38x plus $66.88x plus $88.75x).

(*2*) With respect to US2's 18 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $3.38x ($18x multiplied by $24x/$128x) and fair market value of $12x ($120x multiplied by $40x/$400x), resulting in aggregate gain in such portions of $8.63x (or $.48x in each such portion of the 18 shares). The portions attributable to the CFC2 stock have an aggregate basis of $7.88x ($18x multiplied by $56x/$128x) and fair market value of $48x ($120x multiplied by $160x/$400x), resulting in aggregate gain of $40.13x (or $2.23x in each such portion of the 18 shares). The portions attributable to Asset A have an aggregate basis of $6.75x ($18x multiplied by $48x/$128x) and fair market value of $60x ($120x multiplied by $200x/$400x), resulting in aggregate gain of $53.25x (or $2.96x in each such portion of the 18 shares). Thus, the aggregate gain in all the portions of the 18 shares is $102x ($8.63x plus $40.13x plus $53.25x).

(*3*) Under § 1.1248–8(b)(2)(iv), the earnings and profits of CFC1 attributable to the portions of US1's 30 shares of FA stock that relate to the CFC1 stock is $15x (the product of US1's 50% ownership interest percentage in UST multiplied by $30x of earnings and profits attributable to the CFC1 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC1 stock under section 1248(a) attributable to US1). The earnings and profits of CFC2 attributable to the portions of US1's 30 shares of FA stock that relate to the CFC2 stock is $75x (the product of US1's 50% ownership interest percentage in UST multiplied by $150x of earnings and profits attributable to the CFC2 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC2 stock under section 1248(a) attributable to US1). Similarly, the earnings and profits of CFC1 attributable to the portions of US2's 18 shares of FA stock that relate to the CFC1 stock is $9x (the product of US2's 30% ownership interest percentage in UST multiplied by $30x of earnings and profits attributable to the CFC1 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC1 stock under section 1248(a) attributable to US2). Finally, the earnings and profits of CFC2 attributable to the portions of US2's 18 shares of FA stock that relate to the CFC2 stock is $45x (the product of US2's 30% ownership interest percentage in UST multiplied by $150x of earnings and profits attributable to the CFC2 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC2 stock under section 1248(a) attributable to US2).

(I) Under § 1.1248(f)–2(c)(3), neither US1 nor US2 is required to reduce the aggregate section 358 basis in the portions of their respective shares of FA stock, and UST is not required to include in gross income any additional deemed dividend.

(*1*) US1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock that relate to the CFC1 stock because the $10x section 1248(f) amount with respect to the CFC1 stock attributable to the portions of the shares of FA stock received by US1 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount (as defined in § 1.1248(f)–1(c)(6), or $14.38x) in those portions. The $14.38x postdistribution amount equals the amount that US1 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 30 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($20x fair market value, $5.63x basis, and $15x earnings and profits attributable to the portions for purposes of section 1248). Similarly, US1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock that relate to the CFC2 stock because the $65x section 1248(f) amount with respect to the CFC2 stock attributable to the portions of the shares of FA stock received by US1 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount ($66.88x) in those portions. The $66.88x postdistribution amount equals the amount that US1 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 30 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($80x fair market value, $13.13x basis, and $75x earnings and profits attributable to the portions for purposes of section 1248).

(*2*) US2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock that relate to the CFC1 stock because the $6x section 1248(f) amount with respect to the CFC1 stock attributable to the portions of the shares of

FA stock received by US2 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US2's postdistribution amount ($8.63x) in those portions. The $8.63x postdistribution amount equals the amount that US2 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 18 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($12x fair market value, $3.38x basis, and $9x earnings and profits attributable to the portions for purposes of section 1248). Similarly, US2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock that relate to the CFC2 stock because the $39x section 1248(f) amount with respect to the CFC2 stock attributable to the portions of the shares of FA stock received by US2 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount ($40.13x) in those portions. The $40.13x postdistribution amount equals the amount that US2 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 18 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($48x fair market value, $7.88x basis, and $45x earnings and profits attributable to the portions for purposes of section 1248).

(J) The amount of gain subject to the gain recognition agreement filed by each of US1 and US2 is determined pursuant to paragraph (e)(6)(i) of this section. The amount of gain subject to the gain recognition agreement filed by US1 with respect to the stock of CFC1 and CFC2 is $10x and $65x, respectively. The $10x and $65x are computed as the product of US1's ownership interest percentage (50%) multiplied by the gain realized by UST in the CFC1 stock ($20x) and CFC2 stock ($130x), respectively, as determined prior to taking into account the application of any other provision of section 367, reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A), (e)(6)(i)(B), (e)(6)(i)(C), and (e)(6)(i)(D) of this section with respect to the CFC1 stock and CFC2 stock attributable to US1 ($0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock). The amount of gain subject to the gain recognition agreement filed by US2 with respect to the stock of CFC1 and CFC2 is $6x and $39x, respectively. The $6x and $39x are computed as the product of US2's ownership interest percentage (30%) multiplied by the gain realized by UST in the CFC1 stock ($20x) and CFC2 stock ($130x), respectively, as determined prior to taking into account the application of any other provision of section 367, reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A), (e)(6)(i)(B), (e)(6)(i)(C), and (e)(6)(i)(D) of this section with respect to the CFC1 stock and CFC2 stock attributable to US2 ($0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock). X is not required to enter into a gain recognition agreement because the amount of gain that would be subject to the gain recognition agreement is $0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock, computed as X's ownership percentage (20%) multiplied by the gain realized in the stock of CFC1 ($20x multiplied by 20%, or $4x) and CFC2 ($130x multiplied by 20%, or $26x), reduced the amount of gain recognized by UST with respect to the stock of CFC1 and CFC2 that is attributable to X pursuant to § 1.367(a)–7(c)(2) ($4x and $26x, respectively, as determined in paragraph (ii)(C) of this *Example 3*). Pursuant to paragraph (e)(6)(ii) of this section, each gain recognition agreement must include the election described in § 1.367(a)–8(c)(2)(vi). Furthermore, pursuant to paragraph (e)(6)(iii) of this section, US1 and US2 must be designated as the U.S. transferor on their respective gain recognition agreements for purposes of § 1.367(a)–8.

(9) *Illustration of rules.* For rules relating to certain distributions of stock of a foreign corporation by a domestic corporation, see section 1248(f) and §§ 1.1248(f)–1 through 1.1248(f)–3.

(f) through (g)(1)(vi) [Reserved]. For further guidance, see §§ 1.367(a)–3(f) through (g)(1)(vi).

(vii)(A) Except as provided in this paragraph (g)(1)(vii), the rules of paragraph (e) of this section apply to transfers of stock or securities occurring on or after April 17, 2013. For matters covered in this section for periods before April 17, 2013, but on or after March 13, 2009, see § 1.367(a)–3(e) as contained in 26 CFR part 1 revised as of April 1, 2012. For matters covered in this section for periods before March 13, 2009, but on or after March 7, 2007, see § 1.367(a)–3T(e) as contained in 26 CFR part 1 revised as of April 1, 2007. For matters covered in this section for periods before March 7, 2007, but on or after July 20, 1998, see § 1.367(a)–8(f)(2)(i) as contained in 26 CFR part 1 revised as of April 1, 2006.

(g)(1)(vii)(B) through (g)(1)(viii) [Reserved]. For further guidance see § 1.367(a)–3(g)(vii)(B) through (g)(viii).

(ix) Paragraphs (d)(2)(vi)(B) and (d)(3), *Example 6B, Example 6C,* and *Example 9* of this section apply to transfers that occur on or after March 18, 2013. See paragraphs (d)(2)(vi)(B) and (d)(3), *Example 6B, Example 6C,* and *Example 9* of this section, as contained in 26 CFR part 1 revised as of April 1, 2012, for transfers that occur on or after January 23, 2006, and before March 18, 2013.

(g)(2) through (j) [Reserved]. For further guidance, see § 1.367(a)–3(g)(2) through (j).

(k) *Expiration date.* Paragraphs (d)(2)(vi)(B), (d)(3), *Example 6B, Example 6C,* and *Example 9,* and paragraph (e) of this section expire on March 18, 2016.

■ **Par. 4.** Section 1.367(a)–6T is amended by:

■ 1. Adding a sentence at the end of the paragraph (e)(4).

■ 2. Adding paragraph (j).

The additions to read as follows:

§ 1.367(a)–6T Transfer of foreign branch with previously deducted losses (temporary).

* * * * *

(e) * * *

(4) * * * For transactions occurring on or after April 17, 2013, notwithstanding the prior sentence, this paragraph (e)(4) shall apply before the rules of § 1.367(a)–7(c).

* * * * *

(j) *Expiration date.* The second sentence of paragraph (e)(4) of this section expires on March 18, 2016.

■ **Par. 5.** Section 1.367(a)–7T is added to read as follows:

§ 1.367(a)–7T Outbound transfers of property described in section 361(a) or (b).

(a) through (e)(1) [Reserved]. For further guidance, see § 1.367(a)–7(a) through (e)(1).

(2) *Reasonable cause for failure to comply (temporary)*—(i) *Request for relief.* A control group member's failure to timely comply with any requirement of this section shall be deemed not to have occurred if the control group member is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (e)(2)(ii) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) based on all the facts and circumstances.

(ii) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(A) *Time of submission.* A control group member's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the control group member becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(B) *Notice requirement.* In addition to the requirements of paragraph

(e)(2)(ii)(A) of this section, a control group member must comply with the notice requirements of this paragraph (e)(2)(ii)(B). If any taxable year of the control group member is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the control group member is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(iii) *Cross-reference for reasonable cause relief requests by U.S. transferor.* If the U.S. transferor fails to timely comply with any requirement of this section, the U.S. transferor will be treated as having timely complied with the requirement if the U.S. transferor (or the foreign acquiring corporation on behalf of the U.S. transferor) satisfies the reasonable cause requirements described in § 1.6038B–1T(f)(3).

(iv) *Effective/applicability date.* The rules of paragraphs (e)(2)(i) through (e)(2)(iii) of this section shall apply to transactions occurring on or after April 17, 2013.

(v) *Expiration date.* Paragraphs (e)(2)(i) through (e)(2)(iv) of this section expire on March 18, 2016.

(e)(3) through (j) [Reserved]. For further guidance, see § 1.367(a)–7(e)(3) through (j).

■ **Par. 6.** Section 1.1248(f)–3T is added to read as follows:

§ 1.1248(f)–3T Reasonable cause and effective/applicability dates (temporary).

(a) *Reasonable cause for failure to comply*—(1) *Request for relief.* If an 80-percent distributee, a distributee that is a section 1248 shareholder, or the domestic distributing corporation (reporting person) fails to timely comply with any requirement under § 1.1248(f)–2, the failure shall be deemed not to have occurred if the reporting person is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (a)(2) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) based on all the facts and circumstances.

(2) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(i) *Time of submission.* A reporting person's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the reporting person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(ii) *Notice requirement.* In addition to the requirements of paragraph (a)(2)(i) of this section, the reporting person must comply with the notice requirements of this paragraph (a)(2)(ii). If any taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) *Effective/applicability date.* This section applies to distributions occurring on or after April 17, 2013.

(4) *Expiration date.* Paragraphs (a)(1) through (a)(3) of this section expire on March 18, 2016.

■ **Par. 7.** Section 1.6038B–1T is amended by revising paragraph (f) to read:

§ 1.6038B–1T Reporting of certain transfers to foreign corporations.

* * * * *

(f)(1) through (f)(2) [Reserved]. For further guidance, see § 1.6038B–1(f)(1) through (f)(2).

(3) *Reasonable cause for failure to comply*—(i) *Request for relief.* If the U.S. transferor fails comply with any requirement of section 6038B and this section, the failure shall be deemed not to have occurred if the U.S. transferor is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (f)(3)(ii) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) based on all the facts and circumstances.

(ii) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(A) *Time of submission.* A U.S. transferor's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(B) *Notice requirement.* In addition to the requirements of paragraph (f)(3)(ii)(A) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (f)(3)(ii)(B). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(iii) *Effective/applicability date.* This section applies to distributions occurring on or after April 17, 2013.

(iv) *Expiration date.* Paragraphs (f)(3)(i) through (f)(3)(iii) of this section expire on March 18, 2016.

(f)(4) [Reserved]. For further guidance, see § 1.6038B–1T(f)(4).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, the table in paragraph (b) is amended by adding the following entry numerical order:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)–3T	1545–2183

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)–7T	1545–2183
* * * * *	
1.1248(f)–3T	1545–2183
* * * * *	
1.6038B–1T	1545–2183
* * * * *	

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: February 19, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–05696 Filed 3–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132702–10]

RIN 1545–BJ74

Indirect Stock Transfers and Coordination Rule Exceptions; Transfers of Stock or Securities in Outbound Asset Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations that eliminate one of two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations. The temporary regulations also modify the exception to the coordination rule for certain outbound exchanges so that it is consistent with the remaining asset reorganization exception. In addition, the regulations modify, in various contexts, procedures for obtaining reasonable cause relief. Finally, the temporary regulations implement certain changes with respect to transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange. The regulations primarily affect domestic corporations that transfer property to foreign corporations in certain outbound nonrecognition exchanges. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by June 17, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–132702–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–132702–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–132702–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert B. Williams, Jr., (202) 622–3860; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 367 of the Internal Revenue Code (Code). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in corporate transactions among their controlled corporations. Thus, the number of affected small entities—in whichever of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The IRS and the Treasury Department estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they transfer the stock of a controlled corporation to a related corporation. While a certain number of small entities may engage in such transactions, the IRS and the Treasury Department do not anticipate the number to be substantial. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under ''Addresses'' heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Robert B. Williams, Jr. of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.367(a)–3 is amended by:

■ 1. Revising paragraphs (d)(2)(vi)(B) and (d)(3) *Examples 6B, 6C,* and *9.*

■ 2. Revising paragraph (e).

■ 3. Adding paragraphs (g)(1)(vii)(A) and (g)(1)(ix) .

The revisions and additions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) [The text of proposed § 1.367(a)–3(d)(2)(vi)(B) is the same as the text of § 1.367(a)–3T(d)(2)(vi)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

Example 6B. [The text of proposed § 1.367(a)–3(d)(3) *Example 6B* is the same as the text of § 1.367(a)–3T(d)(3) *Example 6B* published elsewhere in this issue of the **Federal Register**].

Example 6C. [The text of proposed § 1.367(a)–3(d)(3) *Example 6C* is the same as the text of § 1.367(a)–3T(d)(3) *Example 6C* published elsewhere in this issue of the **Federal Register**].

* * * * *

Example 9. [The text of proposed § 1.367(a)–3(d)(3) *Example 9* is the same as the text of § 1.367(a)–3T(d)(3) *Example 9*

published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) [The text of proposed § 1.367(a)–3(e) is the same as the text of § 1.367(a)–3T(e) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(1) * * *

(vii)(A) [The text of proposed § 1.367(a)–3(a)(1)(vii)(A) is the same as the text of § 1.367(a)–3T(g)(1)(vii)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(ix) [The text of proposed § 1.367(a)–3(g)(1)(ix) is the same as the text of § 1.367(a)–3T(g)(1)(ix) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ Par. 3. Section 1.367(a)–6 is amended by adding a sentence to paragraph (e)(4) to read as follows:

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

* * * * *

(e) * * *

(4) * * * [The text of the final sentence of proposed § 1.367(a)–6(e)(4) is the same as the text of the final sentence of § 1.367(a)–6T(e)(4) published elsewhere in this issue of the **Federal Register**].

■ **Par. 4.** Section 1.367(a)–7 is amended by revising paragraph (e)(2) to read as follows:

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

* * * * *

(e) * * *

(2) [The text of proposed § 1.367(a)–7(e)(2) is the same as the text of § 1.367(a)–7T(e)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 5.** Section 1.1248(f)–3 is amended by revising paragraph (a) to read as follows:

§ 1.1248(f)–3 Reasonable cause and effective/applicability dates.

(a) [The text of proposed § 1.1248(f)–3 is the same as the text of proposed § 1.1248(f)–3T published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 6.** Section 1.6038B–1 is amended by revising paragraph (f)(3) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(f) * * *

(3) [The text of proposed § 1.6038B–1(f)(3) is the same as the text of § 1.6038B–1T(f)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–05702 Filed 3–18–13; 8:45 am]

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Federal Register

Vol. 78, No. 53

Tuesday, March 19, 2013

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Other Services	
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Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MARCH

13771–13998 1
13999–14154 4
14155–14428 5
14429–14634 6
14635–14906 7
14907–15276 8
15277–15596 11
15597–15868 12
15869–16132 13
16133–16398 14
16399–16600 15
16601–16676 18
16777–17068 19

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8933 14429
8934 14431
8935 14433
8936 14435
8937 14627
8938 14629
8939 14631

Executive Orders:
11958 (revoked by EO 13637) 16131
12957 (See Notice of March 12, 2013).....16397
12959 (See Notice of March 12, 2013).....16397
13059 (See Notice of March 12, 2013).....16397
13222 (amended by EO 13637).....16131
13553 (See Notice of March 12, 2013).....16397
13574 (See Notice of March 12, 2013).....16397
13590 (See Notice of March 12, 2013).....16397
13599 (See Notice of March 12, 2013).....16397
13606 (See Notice of March 12, 2013).....16397
13608 (See Notice of March 12, 2013).....16397
13622 (See Notice of March 12, 2013).....16397
13628 (See Notice of March 12, 2013).....16397
13637 16131

Administrative Orders:
Memorandums:
Memorandum of February 20, 2013 13997
Notices:
Notice of March 1, 2013 (see EO 13288 of 3/6/2003; EO 13391 of 11/22/2005; EO 13469 of 7/25/2008) 14427
Notice of March 12, 2013 16397
Order of March 1, 2013 14633

5 CFR

2640 14437

Proposed Rules:
850 14233

6 CFR

Proposed Rules:
5 15889

7 CFR

7 13771
20 16777
51 14907
205 13776
761 13999
762 13999
905 13777
1230 14909

Proposed Rules:
20 16819
60 15645
65 15645
905 14236

9 CFR

417 14635
424 14636

10 CFR

20 16922
30 16922
32 16922
33 16922
34 16922
35 16922
36 16922
37 16922
39 16922
51 16922
71 16922
72 16601
73 16922

Proposed Rules:
72 16619
170 14880
171 14800
429 .....15653, 15808
430 .....14467, 14717, 15808, 15891, 16443
431 14024

12 CFR

998 15869
1730 15869

Proposed Rules:
234 14024

14 CFR

21 16779
25 .....14005, 14007, 14155
33 15597
39 .....14158, 14160, 14162, 14164, 14442, 14640, 14642, 14644, 14647, 15277, 15279, 15281, 15599, 15870, 15874, 16604
71 .....14649, 14651, 14652, 14653, 14909, 14911, 16399, 16400
97 .....14009, 14010, 16606, 16608

117 14166
121 ....14166, 15876
129 14912
254 14913
Proposed Rules:
25 13835
39 ....14029, 14467, 14469, 14719, 14722, 14726, 14729, 14731, 14734, 14934, 15332, 15335, 15655, 15658, 16196, 16198, 16200, 16620
71 ....13843, 14031, 14032, 14473, 14474, 14475, 14477, 14478, 14479, 16202, 16821, 16823

15 CFR
30 16366
744 14914
Proposed Rules:
400 14238
922 ....16622, 16628

16 CFR
4 16611
1112 15836
1118 15836
Proposed Rules:
1500 15660

17 CFR
201 14179

18 CFR
11 15602
38 14654
366 16133

19 CFR
12 14183

20 CFR
1001 15283

21 CFR
56 16401
73 14664
172 14664
173 14664
176 14664
177 14664
178 14664
184 14664
189 ....14012, 14664
510 14667
520 14667
522 14667
529 14667
558 14667
700 14012
890 ....14013, 14015
Proposed Rules:
Ch. I 16824
117 15894

23 CFR
Proposed Rules:
771 15925

25 CFR
11 14017
Proposed Rules:
226 16629

26 CFR
1 ....17024, 17053
48 ....15877, 15878
602 ....17024, 17053
Proposed Rules:
1 ....15337, 16445, 17066
54 16445
57 14034
301 ....14939, 15337, 16446

27 CFR
Proposed Rules:
9 14046

28 CFR
16 14669
58 ....16138, 16159

29 CFR
2520 13781
2560 13797
2571 13797
4022 16401
4044 16401

30 CFR
Proposed Rules:
950 16204

31 CFR
561 16403

33 CFR
100 ....13811, 16780
117 ....14185, 14444, 14446, 15292, 15293, 15878, 15879, 16410, 16411
165 ....13811, 14185, 14188, 15293, 16177
401 16180
Proposed Rules:
100 16205
165 ....16208, 16211

34 CFR
Proposed Rules:
75 16447
Ch. III 14480, 14483, 14947, 16447

36 CFR
7 ....14447, 14673
Proposed Rules:
1195 16448

37 CFR
1 16182

39 CFR
Proposed Rules:
111 16213

40 CFR
52 ....14020, 14450, 14681, 15296, 16412, 16783, 16785, 16790
55 14917
58 16184
60 14457
63 14457
80 14190
81 16792
136 14457
180 ....14461, 15880
271 15299
300 16612
Proposed Rules:
35 16630
49 16825
52 ....15664, 15895, 16449, 16452, 16826
81 16827
147 14951
180 14487
271 15338
372 ....14241, 15913

42 CFR
405 16614
411 16614
412 ....14689, 15882, 16614
413 15882
419 16614
424 ....15882, 16614
476 15882
483 16795
488 16795
489 ....16614, 16795
498 16795
Proposed Rules:
414 16632
419 16632

44 CFR
64 14694
67 ....14697, 14700
Proposed Rules:
67 ....14737, 14738
201 13844
204 14740

45 CFR
153 ....15410, 15541
155 15410
156 ....15410, 15541
157 15410
158 15410
800 15560
Proposed Rules:
155 15553
156 15553

46 CFR
Proposed Rules:
67 14053

47 CFR
1 15615
2 14920
10 16806
25 14920
43 15615
54 ....13936, 16808
63 15615
64 14701
73 16816
Proposed Rules:
2 14952
54 ....14957, 16456
73 ....14060, 14490
95 16827

48 CFR
Proposed Rules:
4 14746
13 14746
14 14746
15 14746
19 14746

49 CFR
71 15883
105 15303
171 15303
172 ....14702, 15303
173 ....14702, 15303
176 14702
177 15303
178 ....14702, 15303
180 15303
213 16052
219 14217
234 16414
238 16052
382 16189
383 16189
390 16189
391 16189
395 16189
396 16189
Proposed Rules:
571 ....13853, 15920
622 15925
633 16460

50 CFR
17 ....14022, 15624
300 16423
622 ....14225, 15641, 15642, 16817
648 ....13812, 14226, 14230
665 15885
679 ....13812, 13813, 14465, 14932, 15643, 16195, 16617
Proposed Rules:
17 ....14245, 15925, 16828
20 14060
100 14755
216 15669
300 14490
622 ....14069, 14503, 15338, 15672
648 ....15674, 16220, 16574
660 14259
679 14490
680 15677

LIST OF PUBLIC LAWS

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H.R. 307/P.L. 113–5
Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Mar. 13, 2013; 127 Stat. 161)

Last List March 12, 2013

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