12–28–10 Tuesday
Vol. 75 No. 248 Dec. 28, 2010

Pages 81371–81816

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, January 25, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 75, No. 248

Tuesday, December 28, 2010

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81560

Air Force Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Entry Control Reconfigruation Area at Wright-Patterson Air Force Base, OH, 81591
Meetings:
Scientific Advisory Board, 81591–81592

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81645–81650

Animal and Plant Health Inspection Service
RULES
Hass Avocados from Mexico:
Importation into the Commonwealth of Puerto Rico and Other Changes, 81372–81376

Antitrust Division
NOTICES
National Cooperative Research and Production Act of 1993:
United Negro College Fund Special Programs Research and Development Consortium, 81650–81651
Proposed Final Judgment and Competitive Impact Statement:
United States v. LucasFilm Ltd., 81651–81659

Bureau of Ocean Energy Management, Regulation and Enforcement

NOTICES
Commercial Lease for the Cape Wind Energy Project, 81637

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81613–81614

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81614–81615
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Notice of Interstate Lien, 81615–81616

Coast Guard
RULES
Safety Zones:
Allegheny River, Pittsburgh, PA, 81469–81471
Columbia River, The Dalles Lock and Dam, 81464–81466
Potential Unexploded Ordinance, Pier 91, Seattle, WA, 81467–81469

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
PROPOSED RULES
Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 81519–81532
NOTICES
Meetings; Sunshine Act, 81589

Consumer Product Safety Commission
RULES
Revocation of Requirements for Full–Size Baby Cribs and Non-Full-Size Baby Cribs, 81788–81789
Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs, 81766–81788
Third Party Testing for Certain Childrens Products:
Baby Cribs; Requirements for Accreditation of Third Party Conformity Assessment Bodies, 81789–81792

Defense Department
See Air Force Department
PROPOSED RULES
Defense Support of Civilian Law Enforcement Agencies, 81547–81555
NOTICES
Meetings:
Missile Defense Advisory Committee; Date Change, 81589–81590
Renewal of Department of Defense Federal Advisory Committees, 81590

Economic Development Administration
NOTICES
Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance, 81563–81564

Employee Benefits Security Administration
PROPOSED RULES
Value-Based Insurance Design in Connection with Preventive Care Benefits; Information Requests, 81544–81547

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Blue Ribbon Commission on America's Nuclear Future, 81592
National Energy Technology Laboratory:
Intent to Grant Exclusive License, 81592–81593

Proposed Subsequent Arrangement, 81593

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Minnesota; Sulfur Dioxide SIP Revision for Marathon Petroleum St. Paul Park, 81471–81474
Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture, etc., 81480–81484
Update to Materials Incorporated by Reference; West Virginia, 81474–81477
Virginia; Amendments to Ambient Air Quality Standards for Particulate Matter, 81477–81480
Approval and Promulgation of Implementation Plans:
Texas; Emissions Banking and Trading of Allowances Program; Withdrawal, 81484
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Minnesota; Sulfur Dioxide SIP Revision for Marathon Petroleum St. Paul Park, 81555
Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture, etc., 81555–81556
NOTICES
Endocrine Disruptor Screening Program:
Evaluating Results of EDSP Tier 1 Screening To Identify Candidate Chemicals for Tier 2 Testing; Availability, 81605–81606

Executive Office of the President
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Model A321–211, –212, –231, and –232 Airplanes, 81433–81436
Boeing Co. Model 737–200, –300, –400, and –500 Series Airplanes, 81409–81412
Boeing Co. Model 737–600, –700, –700C, –800, and –900 Series Airplanes, 81412–81417
Boeing Co. Model 747 Airplanes, 81430–81433
Boeing Co. Model 747–200C, –200F, –400, –400D, and –400F Series Airplanes, 81427–81430
Boeing Co. Model 767 Airplanes, 81422–81424
Bombardier, Inc. Model DHC–8–300 Series Airplanes, 81420–81421
Piper Aircraft, Inc. Model PA–28–161 Airplanes, 81417–81419
Sikorsky Aircraft Corp. Model S76A; B; and C; and Helicopters, 81424–81427
Amendment of Class E Airspace:
Columbus, OH, 81438–81439
Farmington, MO, 81437–81438
Johnson, KS, 81439–81440
Mansfield, OH, 81436–81437
Taos, NM, 81437
Establishment of Class E Airspace:
Benton, IL, 81441–81442
Central City, NE, 81440–81441
Modification of Class E Airspace:
Rawlins, WY, 81442
Revocation of Class E Airspace:
Lone Star, TX, 81442–81443
PROPOSED RULES
Airworthiness Directives:
The Boeing Company Model 777–200, –200LR, 300, and 300ER Series Airplanes, 81508–81512
Various Aviation Communication and Surveillance Systems Traffic Alert and Collision Avoidance System Units, 81512–81514
Amendment of Class E Airspace:
Point Lookout, MO, 81514–81515
Establishments of Class E Airspace:
Colebrook, NH, 81516–81517
Proposed Establishment of Class E Airspace:
Lancaster, NH, 81517–81518
Wolfeboro, NH, 81518–81519
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Criteria for Internet Communications of Aviation Weather, NOTAM, and Aeronautical Data, 81708
Performance and Handling Requirements for Rotorcraft, 81707
Decision to Issue Buy American Waivers for Foreign Object Debris Detection Equipment, 81708–81709
Petitions for Exemption; Summaries of Petitions Received, 81709

Federal Communications Commission
RULES
Digital Television Signals Pursuant to 2004 Satellite Home Viewer Extension and Reauthorization Act, 81491–81498
Rules and Procedures Governing the Provision of International Telecommunications Service, 81488–81491
PROPOSED RULES
Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies, 81558–81559

Federal Deposit Insurance Corporation
NOTICES
Charter Renewals:
Advisory Committee on Economic Inclusion, 81606

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 81484–81488

Federal Energy Regulatory Commission
NOTICES
Applications:
Kern River Gas Transmission Co., 81593–81594
Combined Filings, 81594–81601
Compliance Filings:
North American Electric Reliability Corp., 81601–81602
Environmental Assessments; Availability, etc.:
Tennessee Gas Pipeline Co., Northampton Expansion Project, 81602–81604
Filings:
City of Riverside, CA, 81604
Request For Extension of Time:
Price Dam Partnership, Ltd., 81604–81605
Techincal Conferences:
Smart Grid Interoperability Standards, 81605

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Harrison, et al., Counties, MS; Rescission, 81709–81710

Federal Housing Finance Agency
RULES
Minority and Women Inclusion, 81395–81405
Portfolio Holdings, 81405–81409

Federal Housing Finance Board
RULES
Minority and Women Inclusion, 81395–81405

Federal Mine Safety and Health Review Commission
RULES
Simplified Proceedings, 81459–81464

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81710–81711

Federal Reserve System
PROPOSED RULES
Debit Card Interchange Fees and Routing, 81722–81763
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81606–81610
Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company, 81610–81611
Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction, 81611

Federal Trade Commission
RULES
Guides for the Jewelry, Precious Metals, and Pewter Industries, 81443–81454

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Listing Seven Brazilian Bird Species as Endangered Throughout Their Range, 81794–81815
NOTICES
Endangered and Threatened Wildlife and Plants:
St. Andrew Beach Mouse Recovery Plan, 81637–81639

Food and Drug Administration
RULES
New Animal Drugs:
Deslorelin, 81455–81456
PROPOSED RULES
Substances Generally Recognized as Safe, 81536–81543
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Premarket Notification, 81616
Third Party Review Program Under the Food and Drug Administration Modernization Act, 81616–81617
Determination that Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness:
TRANDATE (Labetalol Hydrochloride) Tablets, 300 Milligrams and 400 Milligrams, 81617–81618
Meetings:
Anesthetic and Life Support Drugs Advisory Committee, 81618
Request for Nominations:
Voting and Non-Voting Members of Public Advisory Committees or Panels, 81618–81622

Foreign Assets Control Office
NOTICES
Additional Designation of Entities Pursuant to Executive Order 13382, 81715–81716
Additional Designations Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe, 81716–81717
Designation of One Entity Pursuant to Executive Order 13224, 81717–81718
Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 13288, 81718

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Buckhorn Exploration Project 2010, Okanogan-Wenatchee National Forest, Okanogan County, WA, 81560–81561
Huron-Manistee National Forests, Michigan, 81561–81562
Meetings:
Wrangell-Petersburg Resource Advisory Committee, 81562

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
PROPOSED RULES
Value-Based Insurance Design in Connection with Preventive Care Benefits; Information Requests, 81544–81547
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Evaluation of Clinical and Translational Science Awards Initiative, 81611–81612
Findings of Misconduct in Science; Correction, 81612
Meetings:
Consumer Operated and Oriented Plan Advisory Board, 81612–81613

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81623–81624
Meetings:
Advisory Committee on Interdisciplinary, Community-Based Linkages, 81624–81625

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection
RULES
Privacy Act of 1974; Implementation of Exemptions:
HSD/USCIS Citizenship and Immigration Data Repository System of Records, 81371–81372

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Implementation and Coordination Grant Application, 81633–81634
Economic Opportunities for Low- and Very Low-Income Persons, 81632–81633

Housing Choice Voucher Program Administrative Fee Study, 81634–81635
Privacy Act; Systems of Records:
Single Family Computerized Homes Underwriting Management Systems, 81635–81637

Indian Affairs Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
No Child Left Behind Act Implementation, 81639–81640

Inspector General Office, Health and Human Services Department

PROPOSED RULES
Solicitation of New Safe Harbors and Special Fraud Alerts, 81556–81558
NOTICES
Privacy Act; Systems of Records, 81562–81563

Interior Department
See Bureau of Ocean Energy Management, Regulation and Enforcement
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Hybrid Retirement Plans, 81456–81457
Source of Income From Qualified Fails Charges; Correction, 81457
PROPOSED RULES
Hybrid Retirement Plans; Correction, 81543–81544
Value-Based Insurance Design in Connection with Preventive Care Benefits; Information Requests, 81544–81547

International Trade Administration
PROPOSED RULES
Antidumping Proceedings:
Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 81533–81536
NOTICES
Final Results of New Shipper Reviews:
Certain Non-Frozen Apple Juice Concentrate from People's Republic of China, 81564–81565
Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 81565–81570
Preliminary Results of Antidumping Duty New Shipper Review:
Polyethylene Terephthalate Film, Sheet, and Strip from India, 81570–81574
Preliminary Results of Countervailing Duty New Shipper Review:
Polyethylene Terephthalate Film, Sheet, and Strip from India, 81574–81584

International Trade Commission
NOTICES
Terminations of Investigations:
Certain Semiconductor Products Made by Advanced Lithography Techniques and Products Containing Same, 81643–81644

Joint Board for Enrollment of Actuaries
RULES
Privacy Act; Implementation, 81454–81455

Judicial Conference of the United States
NOTICES
Hearings:
Committee On Criminal Rules; Cancellation, 81644
Meetings:
Advisory Committee on Rules of Appellate Procedure, 81644
Advisory Committee on Rules of Bankruptcy Procedure, 81644
Advisory Committee on Rules of Criminal Procedure, 81644–81645
Advisory Committee on Rules of Evidence, 81645
Committee on Rules of Practice and Procedure, 81644

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Antitrust Division
RULES
Paroling, Recommitting, and Supervising Federal Prisoners:
Prisoners Serving Sentences Under the United States and District of Columbia Codes, 81457–81459

Labor Department
See Employee Benefits Security Administration
See Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Affordable Care Act Advance Notice of Rescission, 81662
Affordable Care Act Enrollment Opportunity Notice; Prohibition on Lifetime Limits, 81659–81660
Affordable Care Act Patient Protection Notice, 81662–81663
Logging Operations Standard, 81660–81661
Overhead and Gantry Cranes Standard, 81661–81662

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81664–81665

National Credit Union Administration
RULES
Fiduciary Duties at Federal Credit Unions:
Mergers and Conversions of Insured Credit Unions, 81378–81395

National Highway Traffic Safety Administration
NOTICES
Petition for Decision that Nonconforming Vehicles Are Eligible for Importation:
1991 Rice Beaufort Double Trailers, 81711–81712
Petitions for Decisions of Inconsequential Noncompliance:
Goodyear Tire and Rubber Co., 81712–81713

National Institutes of Health
NOTICES
Government-Owned Inventions; Availability for Licensing, 81625–81630
Meetings:
Center for Scientific Review, 81630

National Institute of Allergy and Infectious Diseases, 81631
National Institute of Biomedical Imaging and Bioengineering, 81630

National Oceanic and Atmospheric Administration
RULES
Fisheries of Northeastern United States:
2011 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2011 Quota Adjustments, etc., 81498–81505
Tilefish Fishery, 81505–81507
NOTICES
Endangered and Threatened Species:
Recovery Plan for the Sperm Whale, 81584–81585
Meetings:
Gulf of Mexico Fishery Management Council, 81585–81586
Western Pacific Fishery Management Council, 81586–81587

National Park Service
NOTICES
President William Jefferson Clinton Birthplace Home National Historic Site, 81640
Record of Decision:
Cape Hatteras National Seashore Off–Road Vehicle Management Plan, 81640–81641

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81665–81666

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 81666–81667

Nuclear Regulatory Commission
NOTICES
Biweekly Notice, Applications and Amendments to Facility Operating Licenses, 81667–81675
Issuance of Regulatory Guide, 81675

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Concrete and Masonry Construction Standard, 81663–81664

Patent and Trademark Office
NOTICES
Coding of Design Marks in Registrations, 81587–81589

Pension Benefit Guaranty Corporation
NOTICES
Approval of Exemption From Bond/Escrow Requirements:
Ricketts Acquisition LLC and the Chicago National League Ball Club, LLC, 81675–81677
Request for Exemption from Bond/Escrow Requirements:
Rangers Baseball Express, LLC, and Texas Rangers Baseball Partners, 81677–81678

Personnel Management Office
NOTICES
Meetings:
National Council on Federal Labor-Management Relations, 81678

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Long-Term North to South Water Transfer Program, Sacramento County, CA, 81642–81643
Odessa Subarea Special Study; Adams, Franklin, Grant, and Lincoln Counties, WA, 81641–81642
Hydropower Resource Assessment at Existing Reclamation Facilities; Reopening of Comment Period, 81643

Science and Technology Policy Office
NOTICES
Meetings:
Aeronautics Science and Technology Subcommittee, 81678–81679

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81679–81684
Approval of Public Company Accounting Oversight Board and Annual Accounting Support Fee for Calendar year 2011, 81684–81685
Meetings; Sunshine Act, 81685
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 81704–81706
EDGA Exchange, Inc., 81702–81704
EDGX Exchange, Inc., 81691–81692
Financial Industry Regulatory Authority, Inc., 81704
NASDAQ OMX BX, Inc., 81687–81689
NASDAQ OMX PHLX LLC, 81689–81691
New York Stock Exchange LLC, 81701–81702
NYSE Arca, Inc., 81685–81687, 81692–81701

Social Security Administration
NOTICES
Rate for Assessment on Direct Payment Fees to Representatives in 2011, 81707

Thrift Supervision Office
RULES
Prohibited Service at Savings and Loan Holding Companies:
Reinstitution of Expiration Date of Temporary Exemption, 81377–81378

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 81713–81715

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
E–Verify Program Data Collection, 81631–81632

U.S. Customs and Border Protection
NOTICES
Australia Beef Imports Approved for the Electronic Certification System, 81632

Separate Parts In This Issue

Part II
Federal Reserve System, 81722–81763

Part III
Consumer Product Safety Commission, 81766–81792

Part IV
Interior Department, Fish and Wildlife Service, 81794–81815

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.

6 CFR
5.....81371

7 CFR
319.....81372

12 CFR
585.....81377
701.....81378
708a.....81378
708b.....81378
906.....81395
1207.....81395
1252.....81405

Proposed Rules:
235.....81722

14 CFR
39 (9 documents) 81409, 81412, 81417, 81420, 81422, 81424, 81427, 81430, 81433
71 (9 documents) 81436, 81437, 81438, 81439, 81440, 81441, 81442

Proposed Rules:
39 (2 documents) 81508, 81512
71 (4 documents) 81514, 81516, 81517, 81518

16 CFR
23.....81443
1219 (2 documents) 81766, 81789
1220 (2 documents) 81766, 81789
1500.....81766
1508.....81788
1509.....81788

17 CFR

Proposed Rules:
23.....81519

19 CFR

Proposed Rules:
351.....81533

20 CFR
903.....81454

21 CFR
510.....81455
522.....81455

Proposed Rules:
170.....81536
184.....81536
186.....81536
570.....81536

26 CFR
1 (2 documents) 81456, 81457

Proposed Rules:
1.....81543
54.....81544

28 CFR
2.....81457

29 CFR
2700.....81459

Proposed Rules:
2590.....81544

32 CFR

Proposed Rules:
182.....81547

33 CFR
165 (3 documents) 81464, 81467, 81469

40 CFR
52 (5 documents) 81471, 81474, 81477, 81480, 81484

Proposed Rules:
52 (2 documents) 81555

42 CFR

Proposed Rules:
1001.....81556

44 CFR
65.....81484

45 CFR

Proposed Rules:
147.....81544

47 CFR
1.....81488
63.....81488
73.....81491

Proposed Rules:
5.....81558

50 CFR
17.....81794
648 (2 documents) 81498, 81505

Rules and Regulations

Federal Register
Vol. 75, No. 248
Tuesday, December 28, 2010

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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0088]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/United States Citizenship and Immigration Services–012 Citizenship and Immigration Data Repository System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled "Department of Homeland Security/United States Citizenship and Immigration Services–012 Citizenship and Immigration Data Repository System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the "Department of Homeland Security/United States Citizenship and Immigration Services–012 Citizenship and Immigration Data Repository System of Records" from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective December 28, 2010.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202–272–8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) United States Citizenship and Immigration Service (USCIS) published a notice of proposed rulemaking in the **Federal Register**, 75 FR 54528, September 8, 2010, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/USCIS–012 Citizenship and Immigration Data Repository (CIDR) System of Records. The DHS/USCIS–012 CIDR System of Records notice was published concurrently in the **Federal Register**, 75 FR 54642, September 8, 2010. Comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received six comments on the NPRM. Of the six comments, one was submitted in duplicate. No comments were received on the SORN.

Three of the five original comments received were generally in support of the proposed rule. Two commentors expressed opposition generally to DHS' collection and use of personally identifiable information (PII) for any reason other than to investigate individuals who may have violated the law. The Privacy Act of 1974 permits a federal agency, including DHS, to collect information pertaining to individuals provided that it has the requisite statutory authority to do so. The Privacy Act requires federal agencies to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains including the authority, purpose, category of records, and routine uses in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which PII is put, and to assist individuals to more easily find such files within the agency. DHS met these requirements with the publication of the DHS/USCIS–012 CIDR SORN on September 10, 2010 in the **Federal Register**. As noted in DHS/USCIS–012 CIDR SORN, the authority to collect information within CIDR is §§ 101 and 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 and 1103), and the regulations issued pursuant thereto; § 451 of the Homeland Security Act of 2002 (Pub. L. 107–296); E.O. 12958; E.O. 13356; E.O. 13388; and E.O. 12333.

In addition, as set forth in the DHS/USCIS–012 CIDR SORN, the CIDR system will not collect any new information, but rather, is a mirror copy of USCIS's major immigrant and non-immigrant benefits databases combined into a single user interface and presented in an updated, searchable format on the classified network. This system takes existing USCIS data and recompiles them into a system for the following three purposes: (1) Vetting USCIS application information for indications of possible immigration fraud and national security concerns; (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion; and (3) to respond to requests for information (RFIs) from the DHS Office of Intelligence and Analysis (I&A) and/or the federal intelligence and law enforcement community members that are based on classified criteria.

After consideration of public comments, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to part 5, the following new paragraph "53":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

53. The DHS/USCIS–012 CIDR System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCIS–012 CIDR System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement

of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/USCIS–012 CIDR System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain PII collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting could also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: December 14, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–32540 Filed 12–27–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0060]

RIN 0579–AD13

Hass Avocados From Mexico; Importation Into the Commonwealth of Puerto Rico and Other Changes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to provide for the importation of Hass avocados from Mexico into Puerto Rico under the same systems approach currently required for the importation of Hass avocados into all States of the United States from Michoacán, Mexico. The systems approach requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities. This action will allow for the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico while continuing to provide protection against the introduction of quarantine pests. In addition, we are amending the regulations to provide for the Mexican national plant protection organization to use an approved designee to inspect avocados for export and to suspend importation of avocados into the United States from Michoacán, Mexico, only from specific orchards or packinghouses when quarantine pests are detected, rather than suspending imports from the entire municipality where the affected orchards or packinghouses are located. These changes will provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The requirements for importing Hass avocados into the United States from Michoacán, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

On May 14, 2010, we published in the **Federal Register** (75 FR 27225–27227, Docket No. APHIS–2008–0060) a proposal [1] to amend the regulations to:

- Allow the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico, under the same conditions required for importation into the 50 States;
- Provide for the Mexican national plant protection organization (NPPO) to use an approved designee to inspect avocados for export; and
- Limit the scope of suspension of export certification to the orchard or packinghouse in which pests are found, rather than the municipality in which the orchard or packinghouse is located.

We solicited comments concerning our proposal for 60 days ending July 13, 2010. We received four comments by that date. They were from associations of avocado producers and representatives of State and foreign

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0060.*

governments. They are discussed below by topic.

General Comments

One commenter stated that invasive pests are one of the foremost challenges for California avocado growers and that research has definitively shown that some of the most pernicious avocado pests presently found in California originated in Mexico and Central America. This commenter stated that growers are apprehensive about any modification of export protocols that shifts risk to the domestic producer, and the commenter characterized the proposed rule as an example of such risk-shifting.

The commenter did not specify which pernicious avocado pests prompted this concern. The regulations in § 319.56–30 set out a systems approach designed to mitigate the risk of introducing quarantine pests via the importation of Hass avocados from Mexico into the United States. By any measure, the systems approach has been successful at this goal. In 9 years of fruit cutting and inspection of Hass avocados imported from Mexico, over 28 million fruit were examined (20.2 million in the orchards, 7.2 million in packinghouses, and 602,490 at border inspection ports) for pests. Twice, the quarantine pest *Contrachelus perseae* was found, both times in backyard avocados that would not have been eligible to be exported to the United States. Both outbreaks of this pest were eradicated. All other avocados from this export program have been found to be free of quarantine pests. There is no evidence that the importation of Hass avocados from Mexico has resulted in the introduction of quarantine pests into the United States.

The proposed changes are minor updates designed to provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

Allowing the Importation of Hass Avocados From Mexico Into Other U.S. Territories

We did not receive any comments expressing concern about allowing the importation of Hass avocados from Mexico into Puerto Rico. However, one commenter requested that we eliminate all restrictions on the importation and distribution of Hass avocados to the U.S. territories as well. The commenter stated that, unless there is a sound scientific reason to ban Mexican Hass avocados from being distributed into the U.S. territories, APHIS should allow the trade, whether or not there has been a formal diplomatic request to lift this trade barrier. The commenter stated that the Plant Protection Act (7 U.S.C. 7701 *et seq.*) clearly considers the territories to be part of the United States.

The commenter noted that Hass avocados produced in California, Chile, New Zealand, and the Dominican Republic can all be imported or moved interstate to the U.S. territories without any additional safeguards or other mitigations for known pests. The commenter stated that if APHIS were to maintain such restrictions on Mexican Hass avocados without a scientific justification, it would risk violating the nondiscrimination provisions of the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures and the comparable provisions of the North American Free Trade Agreement.

Finally, the commenter stated, maintaining a trade restriction may trap unwary U.S. or Mexican produce handlers who are consolidating shipments of produce to the territories.

The commenter also stated that, if the commenter's proposed change was adopted, it would be appropriate to eliminate box markings for restricted distribution, as the extremely small markets in the U.S. territories would not justify the expensive and burdensome box marking and storage arrangements that would be necessary for packers, importers, and marketers, nor the potential compliance costs incurred by APHIS.

Section 319.56–1 prohibits the importation of all fruits or vegetables except as provided in the regulations. We only allow the importation of fruits or vegetables after conducting an analysis of the pest risk associated with the importation of said fruits or vegetables. As noted in the commodity import evaluation document we made available to the public along with the proposed rule, the risks associated with the importation of Hass avocados from Mexico to U.S. territories have not been analyzed. Therefore, we will not allow such importation until an analysis is completed. The differing pest situations in each of the territories require us to conduct separate analyses regarding the importation of Hass avocados from Mexico into each territory.

Hass avocados produced in California have historically been allowed to move freely within the United States, which, as the commenter notes, clearly includes the territories; we expect that any pests associated with the interstate movement of avocados from California would have been introduced into the territories long ago. The risk analyses for the importation of Hass avocados from Chile, New Zealand, and the Dominican Republic all included analysis specific to the territories.

As the importation of most fruits and vegetables is prohibited under § 319.56–1, we ask that foreign governments interested in exporting fruits and vegetables to the United States, or to new areas within the United States, make formal requests to do so, so that we can prioritize our risk analysis activity. If we receive a formal request to analyze the risks associated with the importation of Hass avocados from Mexico into the U.S. territories, we will consider it.

With respect to the commenter's concern regarding produce handlers, for consignments imported into the 50 States and Puerto Rico, we will include as a condition of the import permit a prohibition on moving the avocados to any U.S. territory. In the past, we have found such restrictions to be effective at preventing the unauthorized interstate movement of fruits and vegetables. As part of allowing the importation of Hass avocados from Mexico into Puerto Rico, we proposed to remove the requirement for marking boxes to indicate limitations on their distribution from paragraph (c)(3)(vii) of § 319.56–30 for that reason.

However, we are not removing the remaining box marking requirements in paragraph (c)(3)(vii), which require the avocados to be packed in boxes or crates that are clearly marked with the identity of the grower, packinghouse, and exporter. This information is necessary in case we need to conduct traceback on Hass avocados imported from Mexico.

Use of an Approved Designee To Inspect Avocados for Export

The regulations in § 319.56–30(c)(3)(iv) require samples of Hass avocados produced in Michoacán, Mexico, to be selected, cut, and inspected by the Mexican NPPO and found free from pests. We proposed to amend that paragraph to provide for avocados to be selected, cut, and inspected by either the Mexican NPPO or its approved designee. We stated that the use of approved designees in situations such as this is consistent with the International Plant Protection Convention's International Standard for Phytosanitary Measures (ISPM) No. 20,[2] which, among other things, describes a system that NPPOs may use to authorize other government services, non-governmental organizations, agencies, or

[2] To view this and other ISPMs on the Internet, go to *http://www.ippc.int/* and click on the "Adopted Standards" link under the "Core activities" heading.

persons to act on their behalf for certain defined functions.

One commenter supported this change, but stressed the importance of reviewing the criteria that will be utilized by the Mexican NPPO to choose a designee for these purposes. Another commenter noted that ISPM No. 20 states that, for the use of approved designees, the ISPM guidelines state that "operational procedures" are required and that "procedures should be developed for the demonstration of competency and for audits, corrective actions, system review and withdrawal of authorization." This commenter recommended that APHIS require the Mexican NPPO to provide detailed procedures consistent with ISPM No. 20 before making this change. The commenter also recommended that the regulations indicate that APHIS retains the right to conduct periodic audits to verify that the procedures, once implemented, are being properly performed by the NPPO's designee.

We will review and approve the Mexican NPPO's procedures for approving designees to select, cut, and inspect fruit before the Mexican NPPO begins using approved designees. The specific process by which this takes place will be detailed in the workplan that the Mexican NPPO provides to APHIS annually. APHIS must approve the workplan. For that reason, it is not necessary to delay changing the regulations in order to ensure that APHIS can review and approve the Mexican NPPO's procedures for approving designees. With respect to the second commenter's other recommendation, the introductory text of paragraph (c) of § 319.56–30 already indicates that APHIS will be directly involved with the NPPO in the monitoring and supervision of activities carried out under § 319.56–30. This would include monitoring the procedures for approving designees.

Two commenters recommended that we allow the Mexican NPPO to use approved designees for the pest surveys and trapping required in paragraph (c)(1) of § 319.56–30. The commenters stated that there may be many highly qualified entomologists or other experts in the private sector that would be available for contracting with the Mexican NPPO to carry out phytosanitary tasks in the avocado orchards.

These commenters suggested that we amend the introductory text of paragraph (c), which currently indicates that personnel carrying out tasks required in paragraph (c) must be "hired, trained, and supervised by the Mexican NPPO," to indicate that it allows the use of accredited inspectors to perform these tasks.

It was necessary to amend paragraph (c)(3)(iv) in order to accommodate the use of approved designees because that paragraph specifically required the Mexican NPPO to select, cut, and inspect fruit. However, the requirement that personnel who perform tasks required in paragraph (c) of § 319.56–30 be hired, trained, and supervised by the Mexican NPPO does not mean that those personnel have to be employees of the Mexican NPPO; they can be hired as contractors, provided that they are trained and supervised by the Mexican NPPO, and provided that they operate in accordance with the various procedures described in ISPM No. 20. Thus, the regulations already accommodate the use of approved designees for these functions. We appreciate the opportunity to clarify this point.

Limiting the Scope of Suspension of Export Certification

Paragraph (e) of § 319.56–30 sets out the procedures that are followed when a pest is detected in the surveys and inspections required in paragraph (c). Under paragraph (e)(1), when avocado seed pests other than the avocado stem weevil *Copturus aguacatae* (*Heilipus lauri, Conotrachelus aguacatae, C. perseae,* or *Stenoma catenifer*) are detected during semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activities, the entire municipality in which the pests are discovered loses its pest-free certification and avocado exports from that municipality are suspended. However, our regulations in paragraphs (e)(2) and (e)(3) call for the suspension of the export certification of individual orchards and packinghouses where the avocado stem weevil, *Copturus aguacatae,* is detected, rather than for the suspension of the export certification of the entire municipality. Based on our experience with the avocado seed pests in the Mexican Hass avocado export program, we proposed to replace paragraphs (e)(1) through (e)(3) of § 319.56–30 with a new paragraph (e) stating that suspension of avocado shipments applies to orchards or packinghouses within a municipality when *H. lauri, C. aguacatae, C. perseae, Copturus aguacatae,* or *S. catenifer* are detected.

One commenter stated that APHIS should establish a buffer zone with a radius of at least 1 square mile from the specific site where an avocado seed pest is detected. The commenter added that orchards encompassed in part or in their entirety by this buffer zone should be suspended from the avocado export program until the pests of concern have been eradicated. To support this position, the commenter cited recent research conducted in Guatemala by Dr. Mark Hoddle, an entomologist at the University of California, Riverside, which has shown that *S. catenifer* are vigorous fliers that commence flight at dusk and continue on and off until dawn. The commenter quoted a personal communication from Dr. Hoddle stating that it is highly likely that *S. catenifer* flies more than 100 meters in one night. The study from which this figure was derived measured flight distances between release points and pheromone traps designed to lure male avocado seed moths. The commenter stated that this distance is almost certainly different for females, which are likely to fly even farther, if necessary, to locate a site suitable for egg-laying; this assertion was based on a personal communication from Dr. Jocelyn Millar, also an entomologist at the University of California, Riverside. The commenter further stated that various moth species have been documented to fly "at least several kilometers" to locate pheromone sources, citing Hoddle, M.S., et al., "Field optimization of the sex pheromone of *Stenoma catenifer* (Lepidoptera: Elachistidae): Evaluation of lure types, trap height, male flight distances, and number of traps needed per avocado orchard for detection," scheduled for publication in an upcoming issue of the Bulletin of Entomological Research.

Another commenter, supporting the change we proposed, cited a Web site presented by Dr. Hoddle [3] that states that the flight of *S. catenifer* when released from vials ranged between 3 and 12 meters; those moths invariably sought refuge in nearby fallen leaves and other debris. The commenter also stated that the original pest risk assessment for the importation of Hass avocados year-round and into all 50 States, prepared in 2004, contained an appendix confirming the limited mobility of the seed pests other than *S. catenifer.*

We appreciate the commenters submitting additional information about *S. catenifer.* In citing Dr. Hoddle's Web site, the second commenter did not mention that the flights of 3 to 12 meters occurred when *S. catenifer* was released during the day (specifically, at 2 p.m.). As discussed by the first commenter, *S. catenifer* has been shown to fly longer

[3] *http://www.biocontrol.ucr.edu/Stenoma/Stenoma.html.*

distances at night in at least some circumstances.

However, the evidence from Dr. Hoddle's studies regarding *S. catenifer*'s mobility in Guatemala may not necessarily be relevant to its mobility in Mexico. *S. catenifer* is known to respond to changes in climate; Guatemala's is a hot climate with periodic shifts from wet to dry seasons, while the province of Michoacán is drier and cooler.

More importantly, conducting the Mexican Hass avocado export program has given us extensive information about how *H. lauri, C. aguacatae, C. perseae, Copturus aguacatae,* and *S. catenifer* behave in commercial Hass avocado production in Michoacán. As noted earlier, only twice has any one of these pests been found, both times in backyard avocados that would not have been eligible to be exported to the United States, and none of the quarantine pests identified in the 2004 pest risk assessment (including the seed pests at issue here) have been found in avocados presented for importation into the United States.

The information provided by the first commenter does not change our conclusion, based on years of evaluation of the effectiveness of the systems approach used to mitigate pests in approved municipalities, that the mobility of avocado seed pests, including *S. catenifer,* creates no greater risk of their avoiding detection than the mobility of the avocado stem weevil, and that the same scope of export suspension should apply to avocado seed pests and the stem weevil. Given our years of experience with surveying and inspecting for these pests in Michoacán, we have determined that the proposed changes are appropriate.

As noted in the proposed rule, if avocado seed pests are present in places of production close to a place of production in which an avocado seed pest is found, the required surveys would find it in those nearby places of production, and we would suspend those places of production as well. The entire municipality would be suspended if the pests were detected in all places of production within that municipality.

In addition, if circumstances were to change, and *S. catenifer* or any of the other seed pests were to suddenly begin infesting commercially produced avocado fruit across wide distances, our surveys and inspections would find the pest, and we would make any necessary adjustments to the program or suspend it while we determined appropriate mitigations for the pests.

One commenter stated that suspension of orchards and packinghouses when a pest is found can and should be based on the scientific evidence of the biology of the particular pest and its known mobility at various stages. Such suspensions should be no greater than scientifically necessary to protect against exported avocados being a pathway for infestations.

The changes in this final rule limit suspension to the orchard or packinghouse where a pest is found. If the commenter is recommending suspending only portions of an orchard or packinghouse when a pest of particularly low mobility is found in the orchard or packinghouse, we would not consider that operationally feasible, since avocados and pests may be moved around freely within orchards or packinghouses.

One commenter stated that, from the inception of the export program, APHIS has based its assumptions about *S. catenifer* and other seed pests on the results of fruit cutting. The commenter stated that small larvae of these pests may easily be overlooked in fruit that, in all respects, appears uninfested or damage-free. Consequently, the commenter stated, orchard surveys that rely on fruit cutting should not inform APHIS' decisionmaking on the mobility of avocado seed pests.

We disagree with the commenter. Inspection using fruit cutting is an effective mitigation for these pests. Avocado fruit discolor immediately when larvae bore tunnels in the fruit, meaning that damage can be easily detected in cut fruit. Inspection has served as an effective mitigation thus far in preventing the introduction of these pests into the United States, even given the great volumes of Hass avocados that have been imported since the beginning of the program.

Other Issues

One commenter recommended that we remove paragraphs (f) and (h) from § 319.56–30, as paragraph (f) relates to restrictions that have been removed from the regulations and paragraph (h) is duplicated by paragraph (g).

We agree. In a final rule published in the **Federal Register** on October 29, 2010 (75 FR 66643–66644, Docket No. APHIS–2008–0016), we made these changes, although we removed paragraph (g) rather than paragraph (h).

That final rule also revised paragraph (c)(3)(vii) to accommodate the use of bulk shipping bins for Hass avocados from Mexico and to remove outdated restrictions. That paragraph has also contained the box marking requirements reflecting the prohibition on importing Hass avocados from Mexico into Puerto Rico or the U.S. territories. We had proposed to remove the last two sentences of the paragraph, which contained the box marking requirement and the outdated restrictions; instead, this final rule specifically removes the box marking requirement.

One commenter stated that the administrative instructions found in 7 CFR 352.29 were published to support and maintain the former shipping restrictions on Mexican Hass avocados, which were removed several years ago. This commenter stated that there are no longer any restrictions on moving Mexican avocados through the United States. The commenter stated that these administrative instructions no longer serve any valid purpose and should be eliminated to avoid confusion by the public.

The commenter misunderstands the scope and purpose of § 352.29, which regulates the movement of all avocados from anywhere in Mexico through the United States, rather than the importation of avocados into the United States. The regulations in § 319.56–30 allow only Hass variety avocados from the State of Michoacán to be imported into the United States. However, when exporting to countries other than the United States, Mexican producers and exporters may wish to move avocados of other varieties or from other areas of Mexico through the United States before the avocados arrive at their ultimate destination, in order to use U.S. ports of export. The provisions in § 352.29 allow such transit to occur safely.

One commenter presented extensive information on the use of sex pheromones to lure and trap *S. catenifer* and recommended that we work with the Mexican NPPO to deploy pheromone traps for monitoring and detection purposes in Michoacán.

We appreciate the commenter updating us on the progress of this research. We will review the information submitted and consider whether to incorporate pheromone trapping into the Mexican Hass avocado export program. If we determine that requiring such trapping would be useful, we will publish a proposed rule and take public comment on the use of pheromone trapping.

One commenter complimented the NPPO of Peru on its cooperation in researching *S. catenifer* and recommended that we encourage and facilitate a level of cooperation between California scientists and the Mexican NPPO comparable to the level of cooperation those scientists receive from the NPPO of Peru.

We support the Mexican NPPO working with private collaborators on managing quarantine pest problems. As

members of the North American Plant Protection Organization, APHIS and the Mexican NPPO share a commitment to controlling and eliminating quarantine pest populations. We will continue to encourage collaboration with private groups should opportunities arise.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Hass avocados from Mexico is year-round. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit from these changes. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (*see* footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Puerto Rico has a relatively small avocado industry, importing most of its supply from the Dominican Republic. In 2007, 737 Puerto Rican farms harvested avocados, a significant decrease from the 1,217 farms reported in 2002, and suggesting an increasing reliance on imports. Most, if not all, of these farms are small. Most avocados grown in Puerto Rico, as in the rest of the Caribbean and in Florida, are not Hass variety but larger, smooth-skinned varieties.

We expect this rule to primarily result in increased import competition. Any impacts for Puerto Rico's small entities will depend in part upon the extent to which Hass avocados imported from Mexico substitute for the larger, smooth-skinned varieties produced domestically. Avocado imports from Mexico will directly compete with Hass avocados that may be shipped from California.

Other amendments included in this rule provide for the Mexican NPPO to use an approved designee to inspect avocados for export, and when seed pests are detected, for suspension of avocado imports from specific orchards or packinghouses rather than from the entire municipality where the affected orchards or packinghouses are located. These changes will benefit U.S. entities generally by facilitating the inspection process in Mexico and minimizing import disruptions and reductions due to pest detections.

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

Executive Order 12988

This final rule allows Hass avocados to be imported into Puerto Rico from Michoacán, Mexico. State and local laws and regulations regarding Hass avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–30 is amended as follows:

■ a. By revising paragraph (a)(2) to read as set forth below.

■ b. In paragraph (c)(3)(iv), by adding the words "or its approved designee" after the word "NPPO".

■ c. In paragraph (c)(3)(vii), by removing the words ", and with the statement "Not for importation or distribution in Puerto Rico or U.S. Territories."" and adding a period in their place.

■ d. By revising paragraph (e) to read as set forth below.

§ 319.56–30 Hass avocados from Michoacan, Mexico.

* * * * *

(a) * * *

(2) *Shipping restrictions.* The avocados may be imported into and distributed in all States and in Puerto Rico, but not in any U.S. Territory.

* * * * *

(e) *Pest detection.* If any of the avocado pests *Heilipus lauri, Conotrachelus aguacatae, C. perseae, Copturus aguacatae,* or *Stenoma catenifer* are detected during the semiannual pest surveys in a packinghouse, certified orchard or areas outside of certified orchards, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. Orchards affected by the pest detection will lose their export certification immediately, and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective.

* * * * *

Done in Washington, DC, this 21st day of December 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32589 Filed 12–27–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 585

[Docket No. OTS–2010–0036]

RIN 1550–AC14

Prohibited Service at Savings and Loan Holding Companies; Reinstitution of Expiration Date of Temporary Exemption

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: OTS is revising its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is reinstituting and extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The reinstituted and revised expiration date for the temporary exemption is December 31, 2012.

DATES: *Effective Date:* The final rule is effective on December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and International Activities, Examinations, Supervision and Consumer Protection, (202) 906–7488, Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption expired on September 30, 2010, unless a case-by-case exemption was filed prior to that expiration date.[1]

OTS has decided to reinstitute the temporary regulatory exemption, with a new expiration date of December 31, 2012. OTS notes that the reinstituted regulatory exemption applies from October 13, 2006 until December 31, 2012 and includes the period after October 1, 2010 until today. Given that this reinstitution of the temporary exemption will reduce needless disruptions of SLHC operations, OTS has concluded that reinstituting the exemption is consistent with the purposes of section 19(e) of the FDIA.

Regulatory Findings

Notice and Comment and Effective Date

For the reasons set out in the interim final rule,[2] OTS has concluded that: notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act (APA); there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

Regulatory Flexibility Act

For the reasons stated in the interim final rule,[3] OTS has concluded that this rule does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this rule should not have a significant impact on a substantial number of small entities, as defined in the RFA.

Paperwork Reduction Act

OTS has determined that this rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,[4] OTS has determined that this rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Executive Order 12866

OTS has determined that this rule is not a significant regulatory action under Executive Order 12866.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use "plain language" in all final rules published after January 1, 2000. OTS believes that the final rule is presented in a clear and straightforward manner.

List of Subjects in 12 CFR Part 585

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

■ For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 585 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

■ 2. Amend § 585.100(b)(2) introductory text to read as follows:

§ 585.100 Who is exempt from the prohibition under this part?

* * * * *

(b) *Temporary exemption.* * * *

(2) This exemption expires on December 31, 2012, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

* * * * *

Dated: December 21, 2010.

[1] This temporary exemption originally was initially scheduled to expire on September 5, 2007. OTS has extended the expiration date several times, most recently to September 30, 2010 (74 FR 14457).

[2] 72 FR at 25953.

[3] 72 FR at 25953–54.

[4] 72 FR at 25954.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–32637 Filed 12–27–10; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 708a, and 708b

RIN 3133–AD40

Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing final amendments to its regulations covering several related subjects. The final rule documents and clarifies the fiduciary duties and responsibilities of Federal credit union (FCU) directors. The final rule amends NCUA's indemnification regulation limiting indemnification of FCU officials and employees for liability arising from improper decisions that affect the fundamental rights of credit union members, and makes conforming changes to the standard FCU and corporate credit union bylaws. In addition, the final rule adds new provisions establishing the procedures for insured credit unions merging into banks. The final rule also amends some of NCUA's existing regulatory procedures applicable to insured credit union mergers with other credit unions, conversions to mutual savings banks (MSBs), and termination of share insurance.

DATES: This rule is effective January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Associate General Counsel; Elizabeth Wirick, Staff Attorney; or Jacqueline Lussier, Staff Attorney; Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

On March 18, 2010, the NCUA Board issued a Notice of Proposed Rulemaking (NPR or Proposal) to amend parts 701, 708a, and 708b of NCUA's rules. 75 FR 15574 (March 29, 2010).

The Proposal would have:

- Added a new § 701.4 clarifying the authorities and duties of FCU directors in managing the affairs of their credit unions and revising § 701.33 limiting indemnification of FCU officials and employees for liability arising from improper decisions that affect the fundamental rights of credit union members.
- Revised the existing provisions of Part 708a on insured credit union to MSB conversions.
- Added a new subpart C to Part 708a setting forth procedural and substantive requirements for converting an insured credit union to a bank by merger.
- Revised the existing provisions of Part 708b on insured credit union mergers with other credit unions and the termination of Federal share insurance.

The public comment period for the NPR closed on May 28, 2010. NCUA received comments from 40 commenters including ten Federal and State credit unions, 16 credit union trade organizations (which included 13 State credit union leagues), one State credit union regulators' association, six law firms, two credit union consultants, an individual credit union member, an election teller, a private deposit insurer, an association representing the interests of converting credit union members, and one bank trade association. The most significant comments on each part of the Proposal are discussed in the following section-by-section analysis of the revisions in this final rule.

II. Section-by-Section Analysis

A. Duties of Federal Credit Union Boards of Directors (§ 701.4)

The Proposal included a new § 701.4, titled "General authorities and duties of Federal credit union boards of directors."

Sec. 701.4(a) Management of a Federal Credit Union

Proposed paragraph (a) provided that the management of each Federal credit union is vested in its board of directors, and that while a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's management is non-delegable. The language of the proposal mirrors the duties of the Federal Home Loan Bank directors, as expressed in a rule promulgated by the Federal Housing Finance Agency (FHFA). 12 CFR 917.2(b)(1).

Some commenters stated that NCUA should clarify that while an FCU's board of directors has the ultimate responsibility for the management of the credit union, this responsibility does not include day-to-day management. One commenter said that NCUA should withdraw the language in the second sentence of proposed paragraph (a) making the board's ultimate responsibility for the credit union's management non-delegable. This commenter stated the FCU Act vests the management of each FCU in the board of directors, but it does not prohibit the board from delegating the management of the credit union. The commenter further stated that since an FCU's board is composed primarily of unpaid volunteers the board of directors should be allowed to delegate the management to compensated executives. The commenter recommended NCUA substitute language that the board of directors provides the general direction for the credit union, which would better reflect the policy-making role of the board.

The NCUA Board agrees that paragraph (a) should more closely track the language of section 113 of the FCU Act, which employs the language "general direction and control." Accordingly, the final rule substitutes "general direction and control" for "management." This amendment clarify that the directors do not actually manage the credit union. The board of directors, however, may not and cannot delegate its ultimate statutory responsibility for the proper management of the credit union.

Sec. 701.4(b) Duties of Federal Credit Union Directors

Proposed paragraph (b) set forth the fiduciary duties of FCU directors. It charged each director to:

- Carry out his or her duties as a director in good faith, in a manner reasonably believed to be in the best interests of the membership of the FCU, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances (paragraph (b)(1));
- Administer the affairs of the FCU fairly and impartially and without discrimination in favor of or against any particular member (paragraph (b)(2));
- Understand the FCU's balance sheet and income statement and ask, as appropriate, substantive questions of management and the internal and external auditors (paragraph (b)(3)); and
- Direct the operations of the FCU in conformity with the requirements set forth in the Federal Credit Union Act, the NCUA's regulations, other applicable law, and sound business practices (paragraph (b)(4)).

Proposed paragraph (b)(1) stated that the directors have a fiduciary duty to act in the best interests of credit union members, particularly in connection with matters affecting the fundamental rights of members, such as mergers and conversions. A few commenters objected to the statement in (b)(1) that directors owe fiduciary rights to members and asserted that because members have little right to the equity in their credit unions, credit union members resemble customers of other depository institutions more than shareholders in corporations. Other commenters stated that the duties of the board of directors run first to the credit union and not to the members individually or collectively.

These views are wrong from both a philosophical and legal standpoint. As stated in the preamble to the NPR, the NCUA Board is particularly concerned about assertions that the members of a credit union do not own the credit union, or that the duties of the directors do not flow to the members but, rather, flow in some amorphous way only to the institution. A lack of focus on the interests of the members makes it easier for officials and management to make decisions that benefit themselves personally, even if those decisions are not necessarily in the best interests of the membership as a whole.[1]

The Board cannot emphasize enough that the members own an FCU and that directors of an FCU must consider the interests of the membership as a whole, and put those interests first, when making decisions that affect the credit union. Accordingly, the NCUA Board is revising the final paragraph (b)(1) of § 701.4 of the Proposal to emphasize that each FCU director must carry out his or her duties in a manner the director believes to be in the best interests of the membership of the credit union *as a whole.*

One commenter was concerned that a focus on the membership *as a whole* might keep an FCU from developing new branches or ATMs because some members would be closer to the new branch or ATM and might find the new facility more convenient to use than other members. The Board recognizes that in the short term some members may benefit geographically from an FCU's expansion plans. Such marginal geographical benefits, or other marginal access benefits, will not by themselves cause an FCU expansion to violate the fiduciary duties of an FCU's Board.

One commenter suggested that there might be a difference between the short term interests of credit union members and their long term interests. In the unusual situation where there might be such a perceived conflict, the board of directors should, as part of its due diligence, carefully define the perceived conflict, weight the competing short and long term interests, make a choice based on the greatest needs of the members, and explain the board's choice. Proposed paragraph (b)(1) required FCU directors to carry out their duties with the care an *ordinarily prudent person* in a like position would use under similar circumstances. This language was based in part on Model Business Corporation Act (MBCA) § 8.30, titled "Standards of Conduct for Directors." Some commenters recommended updating the italicized phrase to omit the words "ordinarily prudent" so as to use a 1998 change to § 8.30 of the MBCA employing the language "with the care that a person in a like position would reasonably believe appropriate."[2] These commenters believe the words "ordinarily prudent" heighten the risk of litigation.

The NCUA Board does not agree with the commenters. The *ordinarily prudent person* formulation has been adopted by 41 States while the newer MBCA language has been adopted by only six States.[3] In addition, the proposed language mirrors the current standard applicable to directors of the Federal Home Loan Banks as set forth in 12 CFR 917.2(b)(1). Accordingly, the final rule retains the traditional formulation for a director's standard of care—"with the care an ordinarily prudent person in a like position would use."

Proposed paragraph (b)(2) required that the directors administer the affairs of the Federal credit union fairly and impartially and without discrimination in favor of or against any particular member. Proposed paragraph (b)(2) employed the language of the Federal Home Loan Bank regulation, 12 CFR 917.2(b)(2), and its underlying Federal Home Loan Bank Act (FHLB Act) statutory provision. 12 U.S.C. 1427(j). Some commenters expressed a concern that this "without discrimination" language, combined with the general statement of duties owed to the members in (b)(1), could provide members with a cause of action and increase the risk of litigation.

The NCUA Board does not agree with these comments. First, as stated in the preamble of the NPR, this rulemaking does not create a Federal cause of action in favor of particular individuals or groups of individuals. 75 FR 15574, 15578 n.11. Second, NCUA's research revealed no case law holding that there is an implied private right of action under the equivalent language in the FHLB Act or regulations. In fact, there is case law to the contrary holding that there is no express or implied private right of action under § 1427(j) of the FHLB Act. *Fidelity Financial Corp.* v. *Federal Home Loan Bank of San Francisco,* 589 F. Supp. 885, 891, 894 (N. D. Cal. 1983).

Proposed paragraph (b)(3) required each director, at the time of election or appointment, or within a reasonable time thereafter, not to exceed three months, have at least a working familiarity with basic finance and accounting practices, including the ability to read and understand the FCU's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors.

Many commenters objected to three months as an unreasonably short period in which to become adequately proficient at understanding accounting and finance; several suggested substituting 12 months for three months. Those favoring 12 months stated that many credit union directors serve on a part-time basis, particularly at small credit unions, and acquiring proficiency within only three months would be extraordinarily difficult.

The NCUA Board believes that having a working familiarity with basic finance and accounting practices is essential to being able to perform a credit union director's functions. After considering these comments, however, the Board has decided that directors should be given more time in which to meet this requirement. Accordingly, this final rule revises paragraph (b)(3) to provide for a six-month period in which to gain at least a working familiarity with basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement. As the preamble to the NPR indicated, there are a multiple of sources of training in finance and accounting, including training provided by credit unions, outside sources, or, for small credit unions, NCUA's Office of Small Credit Union Initiatives. Accordingly, six months provides ample time for training while ensuring that directors who lack proper training do not procrastinate in obtaining the necessary training.

Some commenters asked for clarification about what the phrase *as appropriate* meant in the phrase: "to ask, *as appropriate,* substantive questions of management and the

[1] *See* 75 FR 15574, 15575 (Mar. 29, 2010).

[2] 1 Model Business Corporation Act Annot. xv, 8–187 (4th Ed., 2008 Supp., 2009 rev.).

[3] *Id.* at 8–209.

internal and external auditors." The commenters wondered whether it meant that questions should be tailored to the size and complexity of the credit union. In fact, the NCUA Board added the *as appropriate* language to the proposed rule so directors would not feel they had to ask questions just for the sake of asking.

Several other commenters objected to the financial literacy requirement for a variety of reasons. For example, one commenter argued the Proposal takes away one of the core right of members to elect directors of their choice, and that requiring a director to be financially literate or become financially literate within a short period of time would impose an eligibility requirement in violation of the FCU Act and the bylaws. Another commenter asserted that the financial literacy requirement imposes an eligibility requirement in violation of the FCU Act. This commenter believes any member of a credit union, so long as he or she is an adult and has not been convicted of a crime involving dishonesty or breach of trust as provided for, is eligible to serve as a director, regardless of financial literacy. 12 U.S.C. 1761(a), 1785(d).

The Board agrees that any member of an FCU who meets the eligibility requirements of the FCU Act may run for, and serve as, an FCU director. As a matter of safety and soundness, however, a serving director does need to become literate within a reasonable period of time after election or appointment. The level of necessary literacy depends on the size and complexity of the FCU.

Another commenter stated that the Proposal is vague and subjective because it provides no definitive measurements for when and how a director will be considered sufficiently trained in the use of financial statements and other data. This commenter believes that without specific and objective standards, it will be left up to the subjectivity of a given examiner to determine whether directors are in compliance with this requirement. The NCUA Board disagrees. Again, directors must obtain financial knowledge commensurate with the size and complexity of their credit union. The Board also notes there are multiple ways for resolving disputes between credit unions and their examiners. *See, e.g.,* Interpretive Ruling and Policy Statement (IRPS) 95–1, as amended by IRPS 02–1.

Proposed paragraph (b)(4) required each director to direct the operations of the Federal credit union in conformity with the requirements set forth in the FCU Act, the NCUA's regulations, other applicable law, and sound business practices. The final rule revises this section to substitute the phrase "direct management's operations" for "direct the operations."

Sec. 701.4(c) Authority Regarding Staff and Outside Consultants

Proposed paragraph (c)(1) stated that the board of directors and all its committees have authority to retain staff and outside counsel, independent accountants, financial advisors, and other outside consultants at the expense of the Federal credit union. Paragraph (c)(2) states that the board of directors or any committee of the board may require FCU staff that are providing services to the board or committee under paragraph (c)(1) report directly to the board or committee. Paragraph (c)(3) provides that in discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by officers or employees of the FCU, legal counsel, independent accountants, or other experts, and committees of the board of which the director is not a member.

Some commenters opposed the provision requiring FCU employees (staff) to report directly to the board of directors or committees of the board, stating this would undermine management's authority over the employees of the credit union. Another commenter questioned whether committees other than the supervisory committee had the authority to require employees to report directly to the committee. One commenter argued that direct contact between the board of directors and the credit union's employees would put employees at the beck and call of the board and could interfere with the employees' regular duties.

The NCUA Board disagrees. An FCU's board of directors cannot permit the chief executive officer (CEO) to screen all the board's information sources. While the board of directors should not attempt to bypass the CEO in giving *direction* to management and employees, the board is free to ask any manager, employee, or independent contractor to provide the board and its committees information directly and not through the filter of the CEO. The NCUA's Office of General Counsel has previously opined that board members must be free to gather information from any source in the credit union to perform their board duties. OGC Op. No. 03–0763 (Sept. 29, 2003).

Sec. 701.4(d) Reliance

The Proposal instructed FCU directors on the authority and limits of the director's ability to rely on information provided by others. A director is generally entitled to rely on information prepared or presented by employees or consultants whom the director reasonably believes to be reliable and competent in the functions performed. No commenters addressed proposed paragraph (d) of § 701.4.

Sec. 701.4 and the Business Judgment Rule

Some commenters asked about the interplay between § 701.4 and the business judgment rule. One commenter recommended that in the preamble to a final rule NCUA indicate its policy and intention whether the business judgment rule applies in actions brought against the directors of FCUs.

The business judgment rule is a burden of proof issue associated with particular causes of actions. Since the proposed rule does not create an express or implied private right of action, a third party seeking to bring a cause of action must look to State law to establish the cause of action. It is likely that the existence, and form, of any business judgment rule would depend on the law of the State under which the private cause of action would reside. Of course, the business judgment rule does not apply at all to administrative enforcement actions brought by NCUA.

Accordingly, and except as described above, the NCUA Board adopts § 701.4 as proposed.

B. Indemnification (§ 701.33)

As stated in the NPR preamble, the NCUA Board desires to ensure that FCU officials and employees are held personally accountable, where appropriate, for egregious violations of their fiduciary duties. NCUA will not permit an FCU to indemnify officials and employees against liability based on an aggravated breach of the duty of care when such a breach may affect fundamental rights and financial interests of the FCU members.

Accordingly, the Proposal included a new paragraph (c)(5) in § 701.33 prohibiting an FCU from indemnifying an official or employee for personal liability related to any decision made by that individual on a matter significantly affecting the fundamental rights and interests of the FCU's members. Such indemnification, however, was limited to situations in which the decision giving rise to the claim for indemnification is determined by a court to have constituted gross

negligence, recklessness, or willful misconduct. Matters affecting the fundamental rights and interests of FCU members include, charter and share insurance conversions and terminations.

The Proposal also included corresponding amendments to the indemnification provisions of the standard bylaws of FCUs and Federal corporate credit unions. Of the 24 commenters addressing this revision, most opposed it. Most of those opposed argued that the proposed provision would have the unintended consequence of discouraging qualified individuals from serving as directors because of the expanded potential for personal liability. Others asserted it would disadvantage the FCU charter as compared to the State charter because FCU directors would face an even higher burden compared to State chartered CU directors.

The NCUA Board does not agree with these commenters. The proposed prohibition on indemnification is limited to the extraordinary circumstance of a board considering a proposal to change the credit union's charter or insurance status. Not only are these situations rare, but the prohibition would only apply in the very limited circumstance of an aggravated breach of the duty of care as determined by a court.

Some commenters stated that the proposed rule's silence on the advancement of expenses would also disadvantage FCUs in attracting directors. To alleviate this concern, the final rule permits the FCU to advance funds to pay or reimburse reasonable legal fees and other professional expenses incurred by the official or employee to assist the official or employee in resisting lawsuits that the FCU considers meritless. The decision to advance funds requires the FCU's board of directors make a good faith determination, after due investigation, that:

- The official or employee acted in good faith and in a manner he or she believed to be in the best interests of the members;
- The payment will not materially adversely affect the credit union's safety and soundness; and
- The official or employee provides a written affirmation of his or her good faith belief that the relevant standard of conduct in § 701.4 have been met and a written undertaking to reimburse the credit union, to the extent not covered by payments from insurance, the advanced funds if it ultimately decided that the official or employee is not entitled to indemnification.

The NCUA Board is also adding a new provision to § 701.33 reinforcing that fiduciary duties are owed to the members. Existing (and unchanged) § 701.33(c)(2) states that indemnification shall be consistent either with the standards applicable to credit unions generally under the law of the State where the FCU is located or the MBCA, as specified by the credit union. The MBCA standard under which a corporation may indemnify a director requires that the director acted in good faith and with the reasonable belief that his or her conduct was in the best interests of the *corporation.* MBCA § 8.51(a). A commenter stated that this appears to conflict with the Proposal's statement that FCU directors' duties are owed to the membership and not to the credit union *per se.* The NCUA Board agrees that there is an apparent conflict and has added a new paragraph (c)(7) to § 701.33 to resolve this conflict. The new (c)(7) states that, the extent an FCU has chosen to follow State law or the MBCA, the FCU must substitute "best interests of the members" for any language in State law or the MBCA indicating that duties are owed to any persons or entities (such as the credit union or the corporation) other than the membership as a whole.

Accordingly, and except as described above, the final rule amends § 701.33 as proposed.

C. Parts 708a and 708b

The proposed amendments to Parts 708a and 708b revise existing rules on credit union to mutual savings bank (MSB) conversions and conversions to nonfederal deposit insurance. The revisions are designed to better protect the secrecy and integrity of the voting process. The Proposal also reorganized Part 708a and added a new subpart C to Part 708a that establishes procedural and substantive requirements for converting a credit union to a bank through a merger.

The preamble to the Proposal included a detailed section-by-section description and analysis for revised Parts 708a and 708b. 75 FR 15574, 15579–15585 (March 29, 2010). The Board adopted many sections of the Proposal without change, and the detailed analysis of most of these sections is not repeated in this preamble.

Credit Union Conversion to MSB, Part 708a, Subpart A

Sec. 708a.101 Definition of Secret Ballot

The Proposal included a new definition of "secret ballot" in § 708a.101 to prohibit credit union employees from helping members complete ballots or handling completed ballots. One commenter argued the prohibition would prevent employees from responding to any questions at all about the election because of the unclear delineation between answering questions and helping with a ballot. The NCUA Board disagrees. The definition of "secret ballot" prohibits credit union officials from assisting members in completing ballots or handling completed ballots. The provision only prohibits an employee from physically touching a ballot or telling a member which way to vote, and does not prohibit an employee from answering questions. While one commenter said the prohibition on employees handling ballots would create unnecessary difficulties for members, another commenter suggested the rule should also require the independent entity to empty the ballot boxes in credit union branches. After considering the comments, the NCUA Board determined the rule as proposed appropriately protects the secrecy of members' votes without imposing an undue burden on credit unions. Accordingly, the final rule adopts the definition as proposed.

Sec. 708a.101 Definition of "Conducted by an Independent Entity"

The Proposal added new definitions for "independent entity" and "conducted by an independent entity." These definitions describe the qualifications of, and requirements applicable to, the entity responsible for tabulating member votes on the conversion proposal. The new definitions would prohibit the independent entity from providing any interim vote results to credit union management as well as prohibit the opening or tallying of ballots during the election period. As discussed in the Advance Notice of Proposed Rulemaking, NCUA has documented several instances where credit union management's access to interim vote tallies raised concerns about the fairness of elections and the communications to members. 73 FR 5461, 5466 (January 30, 2008).

Several commenters stated the definition of "conducted by an independent entity" as proposed would pose practical challenges. Some of these commenters said the requirement to delay the counting of ballots until after the conclusion of the special meeting would make counting the ballots and certifying the results to NCUA within 10 days much more difficult. The NCUA Board agrees that the change in procedure contemplated by the Proposal could make certification within 10 days

more difficult and has lengthened the period for certification under section 708a.107 to 14 days. Another commenter, a company that conducts corporate elections, explained that the usual way the independent entity determines which members have voted is by opening the ballot and checking the validity of the control number and matching it with a member name. This commenter stated that because the independent entity needs to know which members have voted to produce a list of members who have not voted, the bar on opening ballots during the election period would make it much more difficult to produce the list of members who have yet to vote. The NCUA Board understands the Proposal might require election tellers and credit unions to modify the envelope format so that the outside of the envelope would show the ballot control number. The documented problems with interim vote tallies and the difficulty of ensuring that election tellers with access to interim tallies do not share these tallies with credit union management justify requiring election tellers to change their usual procedures if necessary. NCUA believes those rare cases where voters might not complete a ballot correctly, and so be listed as having voted when they did not actually vote properly, will not affect the fairness of the overall voting process.

Another of the commenters suggested that the independent entity should be allowed to tally ballots as they are received, and only communicating the interim tallies to the credit union should be prohibited. The Board believes it would be too easy for a teller to unintentionally communicate the interim voting results to the credit union.

One commenter who supported the rule as proposed suggested the rule should also prohibit giving credit union management the names of members who have not voted, because members opposing the conversion cannot obtain this information. As an alternative, this commenter suggested allowing management to provide an election reminder notice to the independent entity and having the independent entity mail it to members who have not voted. The Board is not aware of situations where allowing credit union management to obtain lists of non-voting members during the election period has compromised the fairness of an election, and having such lists allows the credit union to conserve resources by only soliciting those who have not yet voted.

Accordingly, the final rule adopts the definitions of "independent entity" and "conducted by an independent entity" as proposed.

Sec. 708a.104 Disclosures

The Proposal also amended the list of disclosures in § 708a.104 (previously § 708a.4) to add disclosures related to the cost of the conversion, the conversion's effect on the availability of facilities, and a statement that NCUA neither supports nor endorses the conversion proposal.

Most commenters were opposed to the requirement to disclose the costs of the conversion. One opposing commenter asserted that the costs are irrelevant to members and most of the costs are incurred before members are notified, while another said any such disclosures would be only speculation. The NCUA Board disagrees that simply because, as one commenter alleges, most of the costs have occurred, or, as another commenter alleges, most of the costs are in the future, that members will find these costs, or cost estimates, irrelevant. One of the commenters supporting the cost disclosures also suggested the cost disclosures should be updated in the mailings to members 60 and 30 days before the vote, because any attempted opposition to a conversion proposal causes the credit union to incur additional advertising expenses to respond to the opposition. This suggestion goes beyond the scope of the Proposal. The NCUA Board will consider how these cost disclosure requirements will work in practice before proposing any additional disclosure requirements.

The Proposal also required the converting credit union to disclose the projected effect of the conversion on the availability of facilities, including, at a minimum, the name and location of any branches, shared branches, and ATM networks to which members may lose access. Two commenters objected on the grounds it requires too much precision in advance predictions. The NCUA Board disagrees, as considering the future availability of facilities is a fundamental part of planning for the charter conversion transactions to which this disclosure applies. Moreover, the rule does not require a definitive, final statement about the availability of facilities—the disclosure can state a transaction "could" result in the loss of certain facilities, for example.

The Proposal required the disclosure to include the statement that "NCUA does not approve or disapprove of the conversion proposal or the reasons advanced in support of the proposal." Most commenters did not oppose this disclosure, although several suggested slight amendments. One commenter suggested either deleting the phrase "or the reasons advanced in support of the proposal" or revising the phrase to read "or the reasons in support of or against the proposal." The NCUA Board agrees that adding the language "or against" is a helpful clarification of NCUA's neutrality in the final rule and has made this change. A commenter also suggested including this disclosure on the member-to-member communication as well, but this suggestion goes beyond the scope of the Proposal and the Board declines to adopt it.

Except as described above, the final rule adopts § 708a.104 as proposed.

Sec. 708a.113 Recommendation Against Using Credit Union Staff To Solicit Member Votes

The Proposal added a new paragraph to the voting guidelines section, § 708a.113 (previously § 708a.13), recommending against the use of credit union employees to solicit member votes. Although most commenters opposed this guidance, the opposing commenters tended to mischaracterize it as a requirement. The voting guidelines, including the recommendation to not use staff to solicit member votes, do not impose mandatory requirements, but simply suggest how credit unions can ensure an election is conducted fairly and in a manner that does not jeopardize the operations and condition of the converting credit union. NCUA may in the future propose a requirement that converting credit unions to use an independent third party to solicit votes rather than diverting credit union employees from their usual duties. In this final rule, NCUA strongly encourages credit unions to use an independent third party if soliciting votes.

Accordingly, the final rule adopts the revisions to § 708a.113 as proposed, with minor revisions to highlight NCUA's recommendation against using credit union employees to solicit votes.

Credit Union-Into-Bank Merger, Part 708a, Subpart C

The Proposal included a new subpart C to Part 708a regulating mergers of credit unions into banks. The majority of commenters on these provisions generally supported the concept of regulating these types of transactions, and several commenters noted that these provisions fill a gap in current regulations. Specific comments addressed to certain provisions of subpart C are discussed below.

Sec. 708a.303(a) Merger Valuation

§ 708a.303(a) requires a credit union's board of directors, when looking to

merge into a bank, to determine the merger value of the credit union either by conducting an auction or retaining a "qualified appraisal entity" to estimate the merger value of the credit union before directors select a bank merger partner and vote on a proposal to merge. A qualified appraisal entity must have no past financial relationship with the merging credit union, the continuing bank, or any law firm representing the credit union or the bank in connection with the merger.

Proposed § 708a.304 requires the credit union to disclose its merger value, and whether any merger payment will be made to members, to NCUA. This section also requires the notice to NCUA to include all information the credit union relied on in making the selection of a merger partner and, if the payment to members is less than the merger value, an explanation of why the merger and the merger partner selected are in the best interests of the members. The Regional Director must disapprove a proposed merger where the merger payment is less than the merger valuation, unless members receive some additional, quantifiable benefit.

Commenters on the merger value provisions were equally divided. Opposing commenters found the merger value requirement too onerous, costly, or beyond NCUA's authority. The NCUA Board disagrees with these latter commenters. In a transaction that fundamentally changes the nature of the credit union and its members' ownership, knowing the value of the credit union is critical to the members' decision on approving the merger proposal. This valuation is also critical to NCUA's ability to make the statutorily required determination of whether a proposed merger meets the "convenience and needs of the members." 12 U.S.C. 1785(c)(5). While the merger valuation requirement may entail addition procedures, analysis, and costs for the credit union proposing the transaction, knowing the merger value, and whether members are receiving compensation for this value, outweighs institutions' concerns about additional procedures.

Some supporting commenters suggested revisions to the merger valuation process. A few would expand the requisite analysis to include intangible items such as the value of the relationship between the members and the credit union and would exclude the value of benefits a credit union member could get simply by becoming a bank customer in addition to a credit union member. The NCUA Board has not modified the rule as suggested by these commenters. The NCUA Board will examine how the merger valuation provision works in future practice before making adjustments to the procedure.

Finally, one commenter suggested that a "qualified appraisal entity" under this provision should not only have no past relationship with the continuing bank or the merging credit union and any law firm representing either institution, but also no past relationship with the bank's affiliates or holding company. The NCUA Board agrees that to be a qualified appraisal entity, the entity must also have no past relationship with a bank's owners, affiliates, or holding companies, and the final rule reflects this.

Sec. 708a.304(g) Regional Director Approval

Proposed paragraph 708a.304(g) required the Regional Director to review the merging credit union's Notice of Intent to Merge and Request for Approval (NIMRA) and either disapprove the NIMRA or authorize the credit union to proceed to the member vote. Section 708a.308 requires the Regional Director to review the methods and procedures of the membership vote and approve or disapprove the merger. Several commenters expressed concerns about the amount of discretion given to the Regional Directors in these reviews, with some suggesting these reviews exceed the scope of NCUA's authority.

The NCUA Board does not share these concerns, and the final rule retains the proposed delegations. The authority and discretion the NCUA Board gives to Regional Directors under this provision is entirely in keeping with the role assigned to the NCUA Board and the NCUA Board's authority to delegate duties to staff under the FCU Act. The FCU Act requires the NCUA Board to assure that a Federally insured credit union's merger with another type of financial institution, among other requirements, meets the "convenience and needs of the members." 12 U.S.C. 1785(c)(5). The FCU Act also permits the NCUA Board to delegate any of its responsibilities to staff. 12 U.S.C. 1766(d). As part of its statutorily required assessment of whether a proposed transaction meets the convenience and needs of the members, the NCUA Board is delegating to the Regional Director the determination of whether the notice of a proposal to merge and the methods and procedures used to conduct the member vote were adequate.

Sec. 708a.305 Disclosures

Proposed § 708a.305 includes required disclosures to credit union members for credit union-to-bank mergers similar to those required for credit union-to-bank conversions. Comments were evenly split between support of and opposition to the disclosures.

One commenter recommended a change to § 708a.305(d)(2), which says a member "could" lose all ownership interests if the bank converts to a stock bank and members do not purchase stock. This commenter recommended replacing the word "could" with "will," because the fact that a member needs to re-purchase the ownership interest indicates the member no longer has it. Conversely, an opposing commenter stated the member rights disclosures ignore the rights of MSB members to subscribe to the initial stock offering. While the NCUA Board agrees with the first commenter that a former credit union member will lose ownership interests if the MSB later converts to a stock bank and the MSB member does not subscribe to the stock offering, the final rule retains the word "could" because a total loss of ownership interests is dependent on the MSB converting to a stock bank. The NCUA Board does not agree the disclosure ignores MSB members' rights to subscribe to the initial stock offering, since the disclosure explicitly mentions the possibility that the MSB member may purchase stock.

Sec. 708a.306 Participation Requirement

Proposed § 708a.306 requires that at least 20 percent of members participate in the vote on merging with a bank. One commenter deemed 20 percent too low, since it would allow a merger with a bank with only 10 percent of the credit union members voting affirmatively. Another commenter deemed 20 percent too burdensome and opined the expenses of recruiting members to vote would drive down the value of the credit union to the potential merger partner. The final rule retains the 20 percent participation requirement. This requirement is identical to the participation requirement for converting from Federal deposit insurance under the FCU Act. 12 U.S.C. 1786(d)(2).

As discussed above, the final part 708a, Subpart A (for credit union conversions to MSBs) contained modified definitions of "independent entity" and "conducted by an independent entity." This final part 708a, Subpart C (for credit union mergers into banks) contains similar modifications.

Accordingly, and except as described above, the final rule adopts the new part 708a, subpart C as proposed.

Credit Union-into-Credit Union Merger, Part 708b, Subpart A

Subpart A of Part 708b regulates credit union-to-credit union mergers and termination of NCUSIF insurance. As discussed below, the Proposal required merging credit unions disclose and explain, in certain mergers, the factors used to determine whether a share adjustment will be paid to members of the merging credit union. The Proposal also required additional disclosures to members and to NCUA regarding compensation increases to key credit union staff and officials.
708b.103(a)((5) Disclosures related to share adjustments.

Proposed paragraph 708b.103(a)(5) expanded on the existing requirement in § 708b.103 for merging credit unions to state the amount of any share adjustment in the summary of the merger plan given to members. The Proposal required, where the net worth ratio of the merging credit union exceeds the net worth ratio of the continuing credit union by more than 500 basis points, an explanation of the factors used in establishing the amount of any proposed adjustment or in determining no adjustment is necessary. Contrary to some commenters' interpretations, the Proposal did not require payment of a share adjustment.

Several commenters argued these disclosures were unnecessary and would discourage mergers or disputed that members of a merging credit union are entitled to the net worth of a merging credit union. The NCUA Board disagrees. As discussed in the preamble to the Proposal, in many cases a merger involves a smaller credit union with limited services and a high net worth ratio (NWR) seeking to merge with a much larger credit union with more services but a lower NWR. 75 FR 15574, 15584 (March 29, 2010). The higher NWR of the merging credit union includes retained earnings that could have been spent, but were not spent, on additional product offerings or more favorable rates. Because, in these situations, the members of the merging credit union have paid for the higher NWR with reduced services or less favorable rates, the NCUA Board believes that where a NWR disparity exists, the members of the merging credit union need to know how any merger dividend, if a merger dividend is offered, was calculated. Accordingly, the final rule adopts paragraph (a)(5) as proposed.

Secs. 708b.103 and 708b.106 Disclosures Related to Compensation Increases Resulting From the Merger

The Proposal amended §§ 708b.103 and 708b.106 to require disclosure to NCUA and to credit union members of any "merger-related financial arrangement," defined to include any increase in direct or indirect compensation to board members or senior management officials that exceeds *the greater of* 15% or $10,000. Half of the comments on this provision supported the general concept of increased disclosure in this area. Most opposing commenters suggested a higher threshold for compensation increases that would trigger disclosures, and several found the $10,000 trigger too low for larger credit unions. The NCUA Board reiterates that the threshold for requiring disclosure is a compensation increase that exceeds *the greater of* 15% or $10,000. Accordingly, for officials with higher salaries, the threshold for disclosure would be compensation increases of more than 15%. The Proposal required disclosures only for compensation increases above certain thresholds and thus balances any privacy interests of the employees with the interests of members in knowing when material financial incentives have been proposed to directors and senior management officials.

Several commenters also suggested this disclosure was unnecessary because it would be included in Internal Revenue Service filings and, for FCU members, accessible under NCUA's regulation on access to books and records. The NCUA Board disagrees that these alternate means of accessing compensation information are adequate for the purposes of a member vote on a merger, because information from these sources is unlikely to be available to members during the voting period. The NCUA Board believes members should know whether credit union directors or senior management officials stand to gain financially from a merger before voting on the merger proposal. Accordingly, the final rule adopts these disclosure changes as proposed.

Share Insurance Conversions, Part 708b, Subpart B

Subpart B of Part 708b regulates share insurance conversions. The proposed changes to Part 708b include the prohibition on interim vote tallies and the ban on employees assisting with or handling ballots in transactions resulting in the termination of NCUSIF share insurance.

The commenters' chief concern about the practical effects of the Proposal—that the prohibition on opening ballots in the definition of "conducted by an independent entity" would make it difficult to ascertain which members had voted—was the same as the concern expressed in the context of credit union-to-bank conversions. Commenters on this section also noted that for conversions from Federal deposit insurance the FCU Act requires 20% of credit union members to vote. 12 U.S.C. 1786(d)(2). The 20% quorum requirement, commenters said, makes it especially important that the credit union proposing the insurance conversion knows how many members have voted, and also more difficult to count the ballots and certify the results within 10 days after the election because a higher proportion of members must vote. As discussed above, the NCUA Board sees no reason why the election teller cannot modify the ballot envelope to allow the election teller to produce a list of members who have voted, and thus a list of those who have not yet voted, and so the Board has not changed the proposed definition. Also as discussed above, the Board is extending the deadline for certifying the election results from 10 days to 14 days after the close of the voting period to allow the teller more time for counting the ballots.

Several commenters opined that applying the ban on interim vote tallies to insurance conversions was unnecessary because the concerns NCUA has documented with previous elections occurred in the context of charter conversions rather than insurance conversions. The NCUA Board disagrees. The same potential for problems exists with any election where credit union officials have access to interim voting tallies, so the NCUA Board has prohibited credit union officials from obtaining interim vote tallies on all transactions affecting a credit union's charter or insurance status. Other commenters suggested NCUA's requirements in this area impermissibly preempt State law. Again, the NCUA Board disagrees, because the FCU Act explicitly gives the NCUA authority to regulate conversion from Federal deposit insurance. 12 U.S.C. 1785(b)(1)(D).

Accordingly, and except as described above, the final rule adopts the proposed changes to Subpart B of § 708b.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). Only a few credit unions convert in a given year. Accordingly, the NCUA Board certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d). For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA identified and described several information collection requirements in the proposed rule. As required by the PRA, NCUA submitted a copy of the proposed regulation to the Office of Management and Budget (OMB) for its review and approval and invited comment on the PRA aspects.

While NCUA received comments on the proposed rule, no commenters specifically addressed the agency's estimates of burden hours or costs as set out in the preamble to the Proposal. Accordingly, NCUA anticipates that OMB will approve NCUA's submission.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This final rule will not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget's determination about whether this rule is a major rule for purposes of SBREFA is pending.

List of Subjects

12 CFR Part 701

Credit unions, Loans.

12 CFR Part 708a

Charter conversions, Credit unions, Mergers of credit unions.

12 CFR Part 708b

Credit unions, Mergers of credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 16, 2010.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR parts 701, 708a, and 708b as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, and 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3619. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Add a new § 701.4 to read as follows:

§ 701.4 General authorities and duties of Federal credit union directors.

(a) *General direction and control of a Federal credit union.* The board of directors is responsible for the general direction and control of the affairs of each Federal credit union. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's direction and control is non-delegable.

(b) *Duties of Federal credit union directors.* Each Federal credit union director has the duty to:

(1) Carry out his or her duties as a director in good faith, in a manner such director reasonably believes to be in the best interests of the membership of the Federal credit union as a whole, and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;

(2) Administer the affairs of the Federal credit union fairly and impartially and without discrimination in favor of or against any particular member;

(3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed six months, have at least a working familiarity with basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors; and

(4) Direct management's operations of the Federal credit union in conformity with the requirements set forth in the Federal Credit Union Act, this chapter, other applicable law, and sound business practices.

(c) *Authority regarding staff and outside consultants.* (1) In carrying out its duties and responsibilities, each Federal credit union's board of directors and all its committees have authority to retain staff and outside counsel, independent accountants, financial advisors, and other outside consultants at the expense of the Federal credit union.

(2) Federal credit union staff providing services to the board of directors or any committee of the board under paragraph (c)(1) of this section may be required by the board of directors or such committee to report directly to the board or such committee, as appropriate.

(3) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or

statements, including financial statements and other financial data, prepared or presented by any of the persons specified in paragraph (d).

(d) *Reliance.* A director may rely on:

(1) One or more officers or employees of the Federal credit union who the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(2) Legal counsel, independent public accountants, or other persons retained by the Federal credit union as to matters involving skills or expertise the director reasonably believes are matters:

(i) Within the particular person's professional or expert competence, and

(ii) As to which the particular person merits confidence; and

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

■ 3. Add paragraphs (c)(5) through (7) to § 701.33 to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

* * * * *

(c) * * *

(5) Notwithstanding paragraphs (c)(1) through (3) of this section, a Federal credit union may not indemnify an official or employee for personal liability related to any decision made by that individual on a matter significantly affecting the fundamental rights and interests of the Federal credit union's members where the decision giving rise to the claim for indemnification is determined by a court to have constituted gross negligence, recklessness, or willful misconduct. Matters affecting the fundamental rights and interests of Federal credit union members include charter and share insurance conversions and terminations.

(6) A Federal credit union may, before final disposition of a proceeding referred to in paragraph (c)(5) of this section, advance funds to pay for or reimburse the expenses, including legal fees, reasonably incurred in connection with the proceeding by an official or employee who is a party to the proceeding because that individual is or was an official or employee of the credit union if:

(i) The disinterested members of the credit union's board of directors (or in the event there are fewer than two disinterested directors, the supervisory committee), in good faith, determine in writing after due investigation and consideration that the official or employee acted in good faith and in a manner he or she reasonably believed to be in the best interests of the credit union's members;

(ii) The disinterested members of the credit union's board of directors (or the supervisory committee, as the case may be), in good faith, determine in writing after due investigation and consideration that the payment or reimbursement of the expenses will not materially adversely affect the credit union's safety and soundness; and

(iii) The official or employee provides:

(A) A written affirmation of the individual's reasonable good faith belief that the relevant standard of conduct described in § 701.4(b) of this chapter has been met by the individual; and

(B) A written undertaking to repay the credit union for any funds advanced or reimbursed, to the extent not covered by payments from insurance, if the official or employee is not entitled to indemnification under paragraph (c)(5) of this section.

(7) To the extent a Federal credit union has elected to follow State law or the Model Business Corporation Act in accordance with paragraph (c)(2) of this section, the credit union must substitute the phrase "in the best interests of the members" for any language indicating that fiduciary duties are owed to persons or entities other than the members of the credit union, including, but not limited to, language such as "in the best interests of the credit union" or "in the best interests of the corporation."

■ 4. Section 8 of Article XVI of appendix A to part 701 is revised to read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

* * * * *

Article XVI. General

* * * * *

Section 8. *Indemnification.* (a) Subject to the limitations in § 701.33(c)(5) through (c)(7) of the regulations, the credit union may elect to indemnify to the extent authorized by (check one)

[ ] Law of the State of _____:

[ ] Model Business Corporation Act:

the following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

[ ] Current officials

[ ] Former officials

[ ] Current employees

[ ] Former employees

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable State law or the Model Business Corporation Act.

(c) The term "official" in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

* * * * *

PART 708a—BANK CONVERSIONS AND MERGERS

■ 5–6. Revise the authority citation for part 708a to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

■ 7. Revise the heading for part 708a to read as set forth above:

§§ 708a.1 through 708a.13 [Redesignated as §§ 708a.101 through 708a.113]

■ 8a. Redesignate §§ 708a.1 through 708a.13 as §§ 708a.101 through 708a.113, respectively.

Subpart A—Conversion of Insured Credit Unions to Mutual Savings Banks

■ 8b. Add a new subpart A, consisting of newly redesignated §§ 708a.101 through 708a.113 with the heading as shown above:

■ 9. Revise § 708a.101 by adding definitions of "conducted by an independent entity," "independent entity," and "secret ballot" to read as follows:

§ 708a.101 Definitions.

* * * * *

Conducted by an independent entity means:

(1) The independent entity will receive the ballots directly from voting members.

(2) After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting.

(3) The independent entity will certify the final vote tally in writing to the credit union and provide a copy to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit

union prior to certifying the final vote tally.

* * * * *

Independent entity means a company with experience in conducting corporate elections. No official or senior management official of the credit union, or the immediate family member of any official or senior management official, may have any ownership interest in, or be employed by, the entity.

* * * * *

Secret ballot means no credit union employee or official can determine how a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots.

* * * * *

■ 10–11. Amend § 708a.104 as follows:

■ a. In paragraph (b)(4)(i), add the word "of" after the word "Plan".

■ b. Revise paragraphs (c)(4) and (5), and add new paragraphs (c)(6), (7), and (8).

■ c. In paragraph (f)(2), add the phrase "to a Bank" after the word "Conversion" in the last sentence.

The revisions and additions read as follows:

§ 708a.104 Disclosures and communications to members.

* * * * *

(c) * * *

(4) An affirmative statement that, at the time of conversion to a mutual savings bank, the credit union does or does not intend to convert to a stock institution or a mutual holding company structure;

(5) A clear and conspicuous disclosure of the estimated, itemized cost of the proposed conversion, including printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, other costs of conducting the vote, and any other conversion-related expenses;

(6) A clear and conspicuous disclosure of how the conversion from a credit union to a mutual savings bank will affect the institution's ability to make non-housing-related consumer loans because of a mutual savings bank's obligations to satisfy certain lending requirements as a mutual savings bank. This disclosure should specify possible reductions in some kinds of loans to members;

(7) A clear and conspicuous disclosure that the National Credit Union Administration does not approve or disapprove of the conversion proposal or the reasons advanced in support of and the reasons against the proposal; and

(8) A clear and conspicuous disclosure of how the conversion from a credit union to a mutual savings bank is likely to affect the availability of facilities and services. At a minimum, this disclosure should include the name and location of any branches, including shared branches, and automatic teller networks, to which members may lose access as a result of the conversion. This disclosure must be based on research and analysis completed before the date the board of directors votes to adopt the conversion proposal.

* * * * *

■ 12. Amend § 708a.107 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 708a.107 Certification of vote on conversion proposal.

(a) The board of directors of the converting credit union must certify the results of the membership vote to the Regional Director within 14 calendar days after the vote is taken.

* * * * *

(c) The certification must be accompanied by copies of all correspondence between the credit union and any Federal banking agency whose approval is required for the conversion.

■ 13. Amend § 708a.113 by adding paragraph (e) to read as follows:

§ 708a.113 Voting guidelines.

* * * * *

(e) *Solicitation of votes.* Some credit unions may wish to contact members who have not voted and encourage them to vote on the conversion proposal. NCUA believes, however, that using credit union employees to solicit votes is problematic. Employees directed to solicit votes could easily neglect everyday duties critical to the credit union's safe and sound operation. Also, employees may very well feel pressured to solicit votes for the conversion, regardless of whether or not they support the conversion. Accordingly, NCUA strongly encourages converting credit unions to use an independent third party to solicit votes rather than diverting credit union employees from their usual duties.

Subpart B—[Reserved]

■ 14a. Add a reserved subpart B.

■ 14b. Add subpart C to part 708a to read as follows:

Subpart C—Merger of Insured Credit Unions Into Banks

Sec.

708a.301 Definitions.
708a.302 Authority to merge.
708a.303 Board of directors' approval and members' opportunity to comment.
708a.304 Notice to NCUA and request to proceed with member vote.
708a.305 Disclosures and communications to members.
708a.306 Membership approval of a proposal to merge.
708a.307 Certification of vote on merger proposal.
708a.308 NCUA approval of the merger.
708a.309 Completion of merger.
708a.310 Limits on compensation of officials.
708a.311 Voting incentives.
708a.312 Voting guidelines.

Subpart C—Merger of Insured Credit Unions Into Banks

§ 708a.301 Definitions.

As used in this part:

Bank has the same meaning as in section 3(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a).

Clear and conspicuous means text in bold type in a font size at least one size larger than any other text used in the document (exclusive of headings), but in no event smaller than 12 point.

Conducted by an independent entity means:

(1) The independent entity will receive the ballots directly from voting members.

(2) After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting.

(3) The independent entity will certify the final vote tally in writing to the credit union and provide a copy to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit union prior to certifying the final vote tally.

Credit union has the same meaning as insured credit union in section 101 of the Federal Credit Union Act.

Distribution formula is the formula the bank will use to determine each member's portion of that payment to be received upon completion of the merger.

Federal banking agencies have the same meaning as in section 3 of the Federal Deposit Insurance Act.

Merger means any transaction in which a credit union transfers all, or substantially all, of its assets to a bank. The term *merger* includes any purported conversion of a credit union to a bank

if the purported conversion is conducted pursuant to an agreement between a preexisting bank and the credit union that provides—

(1) The credit union will not conduct business as a stand-alone bank, and

(2) The purported conversion will be followed by the transfer of all, or substantially all, of the credit union's assets to the preexisting bank.

Merger value or *merger valuation* is the amount that a stock bank would pay in an arm's-length transaction to purchase the credit union's assets and assume its liabilities and shares (deposits).

Qualified appraisal entity means entity that has significant experience in the valuation of depository institutions and that has no past financial relationship with the merging credit union; the continuing bank, the continuing bank's owners, affiliates, or holding companies; or any law firm representing the credit union or the bank in connection with the merger.

Regional director means the director of the NCUA regional office for the region where a natural person credit union's main office is located. For corporate credit unions, *regional director* means the director of NCUA's Office of Corporate Credit Unions.

Secret ballot means no credit union employee or official can determine how a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots.

Senior management official means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate Federal banking agencies pursuant to section 32(f) of the Federal Deposit Insurance Act.

§ 708a.302 Authority to merge.

A credit union, with the approval of its members, may merge into a bank only with the prior approval of NCUA, the Federal Deposit Insurance Corporation, and the regulator of the bank. If the credit union is State chartered, it also needs the prior approval of its State regulator.

§ 708a.303 Board of directors' approval and members' opportunity to comment.

(a) *Merger valuation.* Before selecting a bank merger partner and voting on a proposal to merge, a credit union's board of directors must determine, as part of its due diligence, the merger value of the credit union. In making its determination of the merger value of the credit union, the credit union must either:

(1) Conduct a well-publicized merger auction and obtain purchase quotations from at least three banks, two or more of which must be stock banks; or

(2) Retain a qualified appraisal entity to analyze and estimate the merger value of the credit union.

(b) *Advance notice.* A credit union that does not conduct a public auction as described in paragraph (a)(1) of this section must comply with the following notice requirements before voting on a proposal to merge.

(1) No later than 30 days before a board of directors votes on a proposal to merge, it must publish a notice in a general circulation newspaper, or in multiple newspapers if necessary, serving all areas where the credit union has an office, branch, or service center. It must also post the notice in a clear and conspicuous fashion in the lobby of the credit union's home office and branch offices and on the credit union's Web site, if it has one. If the notice is not on the home page of the Web site, the home page must have a clear and conspicuous link, visible on a standard monitor without scrolling, to the notice.

(2) The public notice must include the following:

(i) The name and address of the credit union;

(ii) The name and type of institution into which the credit union's board is considering a proposal to merge;

(iii) A brief statement of why the board is considering the merger and the major positive and negative effects of the proposed merger;

(iv) A statement that directs members to submit any comments on the proposal to the credit union's board of directors by regular mail, electronic mail, or facsimile;

(v) The date on which the board plans to vote on the proposal and the date by which members must submit their comments for consideration; which submission date may not be more than 5 days before the board vote;

(vi) The street address, electronic mail address, and facsimile number of the credit union where members may submit comments; and

(vii) A statement that, in the event the board approves the proposal to merge, the proposal will be submitted to the membership of the credit union for a vote following a notice period that is no shorter than 90 days.

(3) The board of directors must approve publication of the notice.

(c) *Member comments.* A credit union must collect and review any member comments about the merger received during the merger process. The credit union must retain the comments until the merger is consummated.

(d) *Approval of proposal to merge.* The merger proposal may only be approved by an affirmative vote of a majority of board members who have determined:

(1) A merger with a bank is in the best interests of the members, and

(2) The merger partner selected by the directors is the best choice for the members, taking into account the merger value of the credit union and the amount that the selected merger partner is willing to pay the credit union's members to effect the merger.

§ 708a.304 Notice to NCUA and request to proceed with member vote.

(a) *NIMRA.* If a credit union's board of directors adopts a proposal to merge, it must, within 30 days of the adoption, provide the Regional Director with a Notice of its Intent to Merge and Request for NCUA Authorization (NIMRA) to conduct a member vote. The NIMRA must include the following:

(1) The merger plan (as described below in paragraph (b) of this section);

(2) Resolutions of the boards of directors of both institutions;

(3) Certification of the board of directors (as described below);

(4) Proposed Merger Agreement;

(5) Proposed Notice of Special Meeting of the Members and any other communications about the merger that the credit union intends to send to its members, including electronic communications posted on a Web site or transmitted by electronic mail;

(6) Proposed ballot to be sent to the members;

(7) For State chartered credit unions, evidence that the proposed merger is authorized under State law (as described below);

(8) A copy of the bank's last two examination reports;

(9) A statement of the merger valuation of the credit union;

(10) A statement of whether any merger payment will be made to the members and how such a payment will be distributed among the members;

(11) Information about the due diligence of the directors in locating a merger partner and determining that the merger is in best interests of the members of the credit union (as described below);

(12) Copies of all contracts reflecting any merger-related compensation or other benefit to be received by any director or senior management official of the credit union;

(13) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established annually by the Federal Trade Commission under 15 U.S.C.

18a(a)(2)(B)(i), currently $63.4 million, a statement about whether the two institutions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not;

(14) Copies of any filings the credit union or bank intends to make with another Federal or State regulatory agency in which the credit union or bank seeks that agency's approval of the merger; and

(15) Proof that the accounts of the credit union will be accepted for coverage by the Federal Deposit Insurance Corporation.

(b) *Merger plan.* The merger plan must include:

(1) Current financial statements for both institutions;

(2) Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account for both institutions;

(3) Consolidated financial statements of the continuing institution after the merger;

(4) Explanation of any provisions for reserves, undivided earnings or dividends;

(5) Provisions with respect to notification and payment of creditors; and

(6) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts.

(c) *Director certification.* The NIMRA must include a certification by the credit union's board of directors of their support for the merger proposal and plan. Each director who voted in favor of the merger proposal must sign the certification. The certification must contain the following:

(1) A statement that each director signing the certification supports the proposed merger and believes the proposed merger, and the selected bank merger partner, are both in the best interests of the members of the credit union;

(2) A description of all materials submitted to the Regional Director with the notice and certification;

(3) A statement that each board member signing the certification has examined all these materials carefully and these materials are true, correct, current, and complete as of the date of submission; and

(4) An acknowledgement that Federal law (18 U.S.C. 1001) prohibits any misrepresentations or omissions of material facts, or false, fictitious or fraudulent statements or representations made with respect to the certification or the materials provided to the Regional Director or any other documents or information provided to the members of the credit union or NCUA in connection with the merger.

(d) *Due diligence.* The NIMRA must include a description of all the credit union's due diligence in determining that the merger satisfies the factors contained in section 205(c) of the Act. In particular, the NIMRA must describe how the board located the merger partner, how the board negotiated the merger agreement, and how the board determined that this merger was in the best interests of the credit union's members. The description must include all information relied upon by the credit union in determining the merger value of the credit union, the amount of any payment to be made by the bank to the credit union's members (the "merger payment"), and, if that merger payment is less than the merger value of the credit union, an explanation why the merger and the merger partner selected is in the best interests of the members. The description must include an explanation of the distribution formula by which the merger payment will be distributed among the credit union's members.

(e) *State chartered credit unions.* A State chartered credit union must state as part of its NIMRA if its State chartering law permits it to merge into a bank and provide the specific legal citation. A State chartered credit union will remain subject to any State law requirements for merger that are more stringent than those this part imposes, including any internal governance requirements, such as the requisite membership vote for merger and the determination of a member's eligibility to vote. If a State chartered credit union relies for its authority to merge into a bank on a State law parity provision, meaning a provision in State law permitting a State chartered credit union to operate with the same or similar authority as a Federal credit union, it must:

(1) Include in its notice a statement that its State regulatory authority agrees that it may rely on the State law parity provision as authority to merge; and

(2) Indicate its State regulatory authority's position as to whether Federal law and regulations or State law will control internal governance issues in the merger such as the requisite membership vote for merger and the determination of a member's eligibility to vote.

(f) *Consultation with State authorities.* After receiving a NIMRA from a State chartered credit union, the Regional Director will consult with the appropriate State supervisory authority.

(g) *Regional Director approval.* After receiving a NIMRA, the Regional Director will either disapprove the proposed merger or authorize the credit union to proceed with its membership vote.

(1) The Regional Director will disapprove the proposed merger if the NIMRA either lacks the documentation required by this section or lacks substantial evidence to support each of the factors in section 205(c) of the Act. As part of this determination, the Regional Director must disapprove the proposed merger if:

(i) The merger payment offered by the bank to the members is less than the merger valuation, absent some additional, quantifiable benefit to the members from the selected merger partner; or

(ii) The NIMRA fails to adequately explain the nature and amount of any compensation to be received by the credit union's directors or senior management officials in connection with the merger or to justify that compensation.

(2) NCUA's authorization to proceed with the member vote does not mean NCUA has approved of the merger proposal.

(h) *Appeal of adverse decision.* If the Regional Director disapproves a merger proposal, the credit union may appeal the Regional Director's determination to the Board. The credit union must file the appeal within 30 days after receipt of the Regional Director's determination. The Board will act on the appeal within 120 days of receipt.

§ 708a.305 Disclosures and communications to members.

(a) After the board of directors approves a merger proposal and receives NCUA's authorization as described in §§ 708a.303 and 708a.304, the credit union must provide written notice of its intent to merge to each member who is eligible to vote on the merger. The notice to members must be mailed 90 calendar days and 30 calendar days before the date of the membership vote on the merger. A ballot must be included in the same envelope as the 30-day notice and only with the 30-day notice. A merging credit union may not distribute ballots with the 90-day notice, in any other written communications, or in person before the 30-day notice is sent.

(b)(1) The notice to members must adequately describe the purpose and subject matter of the vote and clearly inform members that they may vote at the special meeting or by submitting the written ballot. The notice must state the date, time, and place of the meeting.

(2) The 90-day notice must state in a clear and conspicuous fashion that a written ballot will be mailed together with another notice 30 days before the date of the membership vote on merger. The 30-day notice must state in a clear and conspicuous fashion that a written ballot is included in the same envelope as the 30-day notice materials.

(3) For purposes of facilitating the member-to-member contact described in paragraph (f) of this section, the 90-day notice must indicate the number of credit union members eligible to vote on the merger proposal and state how many members have agreed to accept communications from the credit union in electronic form. The 90-day notice must also include the information listed in paragraph (g)(9) of this section.

(4) The member ballot must include:

(i) A brief description of the proposal (*e.g.,* "Proposal: Approval of the Plan of Merger by which [insert name of credit union] will merge with a bank");

(ii) Two blocks marked respectively as "FOR" and "AGAINST;" and

(iii) The following language: "A vote FOR the proposal means that you want your credit union to merge with and become a bank. A vote AGAINST the proposal means that you want your credit union to remain a credit union." This language must be displayed in a clear and conspicuous fashion immediately beneath the FOR and AGAINST blocks.

(5) The ballot may also include voting instructions and the recommendation of the board of directors (*i.e.,* "Your Board of Directors recommends a vote FOR the Plan of Merger") but may not include any further information without the prior written approval of the Regional Director.

(c) For mergers into stock banks, an adequate description of the purpose and subject matter of the member vote on merger, as required by paragraph (b) of this section, must include:

(1) A clear and conspicuous disclosure that if the merger is approved the members will lose all of their ownership interests in the institution, including the right to vote, the right to share in the value of the institution should it be liquidated, the right to share in any extraordinary dividends, and the right to have the net worth of the institution managed in their best interests;

(2) A clear and conspicuous disclosure of any post-merger employment or consulting relationships offered by the bank to any of the credit union's directors and senior management officials and the amount of the associated compensation;

(3) A clear and conspicuous disclosure of how the merger of the credit union will affect the members' ability to obtain non-housing-related consumer loans from the bank because of because of the bank's obligations to satisfy statutory or regulatory lending requirements (if any). This disclosure should specify possible reductions in some kinds of loans to members;

(4) A clear and conspicuous statement of the merger value of the credit union, the total dollar amount the selected bank merger partner has agreed to pay to effect the merger, and the distribution formula the bank will use to determine each member's portion of that payment to be received upon completion of the merger; and

(d) For mergers into mutual banks, an adequate description of the purpose and subject matter of the member vote on merger, as required by paragraph (b) of this section, must include:

(1) A clear and conspicuous disclosure of how the merger will affect members' voting rights including whether the bank bases voting rights on account balances;

(2) A clear and conspicuous disclosure that the merger could lead to members losing all of their ownership interests in the credit union if the bank subsequently converts to a stock institution and the members do not purchase stock;

(3) A clear and conspicuous disclosure of any post-merger employment or consulting relationships offered by the bank to the credit union's directors and senior management officials and the associated compensation for each;

(4) A clear and conspicuous disclosure of how the merger of the credit union will affect the members' ability to obtain non-housing-related consumer loans from the bank because of the bank's obligations to satisfy statutory or regulatory lending requirements (if any). This disclosure should specify possible reductions in some kinds of loans to members;

(5) A clear and conspicuous statement that, at the time of merger, the bank does or does not intend to convert to a stock institution or a mutual holding company structure;

(6) A clear and conspicuous statement of the merger value of the credit union, the total dollar amount the selected bank merger partner has agreed to pay to effect the merger, and the distribution formula the bank will use to determine each member's portion of that payment to be received upon completion of the merger; and

(7) If the bank plans to add one or more of the credit union's directors to its board or employ one or more senior officials of the credit union, a clear and conspicuous statement that bank could convert to a stock bank in the future and a comparison of the opportunities available to those officials and employees to obtain stock with the opportunities available to the depositors of the bank.

(e)(1) A merging credit union must provide the following disclosures in a clear and conspicuous fashion with the 90-day and 30-day notices it sends to its members regarding the merger:

IMPORTANT REGULATORY DISCLOSURE ABOUT YOUR VOTE

The National Credit Union Administration, the Federal government agency that supervises credit unions, requires [insert name of credit union] to provide the following disclosures:

1. LOSS OF CREDIT UNION MEMBERSHIP. A vote "FOR" the proposed merger means you want your credit union to merge with and become a bank. A vote "AGAINST" the proposed merger means you want your credit union to remain a credit union.
2. [For Mergers into Stock Banks Only]. LOSS OF OWNERSHIP INTERESTS. If your credit union merges into the bank, you will lose all the ownership interests you currently have in the credit union and you will become a customer of the bank. The bank's stockholders own the bank, and the directors of the bank have a fiduciary responsibility to run the bank in the best interests of the stockholders, not the customers.
2. [For Mergers into Mutual Banks Only]. POTENTIAL PROFITS BY OFFICERS AND DIRECTORS. Merger into a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company structure. In such a scenario, the officers and directors of the bank often profit by obtaining stock in excess of that available to other members.
3. RATES ON LOANS AND SAVINGS. If your credit union merges into the bank, you may experience changes in your loan and savings rates. Available historic data indicates that, for most loan products, credit unions on average charge lower rates than banks. For most savings products, credit unions on average pay higher rates than banks.

(2) This text must be placed in a box, must be the only text on the front side of a single piece of paper, and must be placed so that the member will see the text after reading the credit union's cover letter but before reading any other part of the member notice. The back side of the paper must be blank. A merging credit union may modify this text only with the prior written consent of the Regional Director and, in the case of a State chartered credit union, the appropriate State regulatory agency.

(f) All written communications from a merging credit union to its members regarding the merger must be written in a manner that is simple and easy to understand. Simple and easy to understand means the communications are written in plain language designed to be understood by ordinary consumers and use clear and concise sentences, paragraphs, and sections. For purposes of this part, examples of factors to be considered in determining whether a communication is in plain language and uses clear and concise sentences, paragraphs and sections include the use of short explanatory sentences; use of definite, concrete, everyday words; use of active voice; avoidance of multiple negatives; avoidance of legal and technical business terminology; avoidance of explanations that are imprecise and reasonably subject to different interpretations; and use of language that is not misleading.

(g)(1) A merging credit union must mail or e-mail a requesting member's proper merger-related materials to other members eligible to vote if:

(i) A credit union's board of directors has adopted a proposal to merge;

(ii) A member makes a written request that the credit union mail or e-mail materials for the member;

(iii) The request is received by the credit union no later than 35 days after it sends out the 90-day member notice; and

(iv) The requesting member agrees to reimburse the credit union for the reasonable expenses, excluding overhead, of mailing or e-mailing the materials and also provides the credit union with an appropriate advance payment.

(2) A member's request must indicate if the member wants the materials mailed or e-mailed. If a member requests that the materials be mailed, the credit union will mail the materials to all eligible voters. If a member requests the materials be e-mailed, the credit union will e-mail the materials to all members who have agreed to accept communications electronically from the credit union. The subject line of the credit union's e-mail will be "Proposed Credit Union Merger—Views of Member (insert member name)."

(3)(i) A merging credit union may, at its option, include the following statement with a member's material:

> On (date), the board of directors of (name of merging credit union) adopted a proposal to merge the credit union into a bank. Credit union members who wish to express their opinions about the proposed merger to other members may provide those opinions to (name of credit union). By law, the credit union, at the requesting members' expense, must then send those opinions to the other members. The attached document represents the opinion of a member (or group of members) of this credit union. This opinion is a personal opinion and does not necessarily reflect the views of the management or directors of the credit union.

(ii) A merging credit union may not add anything other than this statement to a member's material without the prior approval of the Regional Director.

(4) The term "proper merger-related materials" does not include materials that:

(i) Due to size or similar reasons are impracticable to mail or e-mail;

(ii) Are false or misleading with respect to any material fact;

(iii) Omit a material fact necessary to make the statements in the material not false or misleading;

(iv) Relate to a personal claim or a personal grievance, or solicit personal gain or business advantage by or on behalf of any party;

(v) Relate to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the proposed merger;

(vi) Directly or indirectly and without expressed factual foundation impugn a person's character, integrity, or reputation;

(vii) Directly or indirectly and without expressed factual foundation make charges concerning improper, illegal, or immoral conduct; or

(viii) Directly or indirectly and without expressed factual foundation make statements impugning the stability and soundness of the credit union.

(5) If a merging credit union believes some or all of a member's request is not proper it must submit the member materials to the Regional Director within seven days of receipt. The credit union must include with its transmittal letter a specific statement of why the materials are not proper and a specific recommendation for how the materials should be modified, if possible, to make them proper. The Regional Director will review the communication, communicate with the requesting member, and respond to the credit union within seven days with a determination on the propriety of the materials. The credit union must then mail or e-mail the material to the members if so directed by NCUA.

(6) A credit union must ensure that its members receive all materials that meet the requirements of § 708a.305(g) on or before the date the members receive the 30-day notice and associated ballot. If a credit union cannot meet this delivery requirement, it must postpone mailing the 30-day notice until it can deliver the member materials. If a credit union postpones the mailing of the 30-day notice, it must also postpone the special meeting by the same number of days. When the credit union has completed the delivery, it must inform the requesting member that the delivery was completed and provide the number of recipients.

(7) The term "appropriate advance payment" means:

(i) For requests to mail materials to all eligible voters, a payment in the amount of 150 percent of the first class postage rate times the number of mailings, and

(ii) For requests to e-mail materials only to members that have agreed to accept electronic communications, a payment in the amount of 200 dollars.

(8) If a credit union posts merger-related information or material on its Web site, then it must simultaneously make a portion of its Web site available free of charge to its members to post and share their opinions on the merger. A link to the portion of the Web site available to members to post their views on the merger must be marked "Members: Share your views on the proposed merger and see other members' views" and the link must also be visible on all pages on which the credit union posts its own merger-related information or material, as well as on the credit union's homepage. If a credit union believes a particular member submission is not proper for posting, it will provide that submission to the Regional Director for review as described in paragraph (g)(5) of this section. The credit union may also post a content-neutral disclaimer using language similar to the language in paragraph (g)(3)(i) of this section.

(9) A merging credit union must inform members with the 90-day notice that if they wish to provide their opinions about the proposed merger to other members they can submit their opinions in writing to the credit union no later than 35 days from the date of the notice and the credit union will forward those opinions to other members. The 90-day notice will provide a contact at the credit union for delivery of communications, will explain that members must agree to reimburse the credit union's costs of transmitting the communication including providing an advance payment, and will refer members to this section of NCUA's rules for further information about the communication process. The credit union, at its option, may include additional factual information about the communication process with its 90-day notice.

(10) A group of members may make a joint request that the credit union send

its materials to other members. For purposes of paragraphs (g)(2) and (g)(3) of this section, the credit union will use the group name provided by the group.

(h) If it chooses, a credit union may seek a preliminary determination from the Regional Director regarding any of the notices required under this subchapter and its proposed methods and procedures applicable to the membership merger vote. The Regional Director will make a preliminary determination regarding the notices and methods and procedures applicable to the membership vote within 30 calendar days of receipt of a credit union's request for review unless the Regional Director extends the period as necessary to request additional information or review a credit union's submission. A credit union's prior submission of any notice or proposed voting procedures does not relieve the credit union of its obligation to certify the results of the membership vote required by § 708a.307 or eliminate the right of the Regional Director to disapprove the merger if the credit union fails to conduct the membership vote in a fair and legal manner consistent with the Federal Credit Union Act and these rules.

§ 708a.306 Membership approval of a proposal to merge.

(a) A proposal for merger approved by a board of directors also requires approval by a majority of the members who vote on the proposal. At least 20 percent of the members eligible to vote must participate in the vote. The credit union must also have NCUA's written authorization to proceed with the member vote.

(b) The board of directors must set a voting record date to determine member voting eligibility. The record date must be at least one day before the publication of notice required in § 708a.303.

(c) A member may vote on a proposal to merge in person at a special meeting held on the date set for the vote or by written ballot delivered by mail or otherwise. The vote on the merger proposal must be by secret ballot and conducted by an independent entity. The independent entity must be a company with experience in conducting corporate elections. No official or senior management official of the credit union or the immediate family members of any official or senior management official may have any ownership interest in or be employed by the independent entity.

§ 708a.307 Certification of vote on merger proposal.

(a) The board of directors of the merging credit union must certify the results of the membership vote to the Regional Director within 14 calendar days after the vote is taken.

(b) The certification must also include a statement that the notice, ballot, and other written materials provided to members were identical to those submitted to NCUA pursuant to § 708a.305. If the board cannot certify this, the board must provide copies of any new or revised materials and an explanation of the reasons for any changes.

(c) The certification must include copies of any correspondence between the credit union and other regulators related to the pending merger.

§ 708a.308 NCUA approval of the merger.

(a) The Regional Director will review the methods by which the membership vote was taken and the procedures applicable to the membership vote. The Regional Director will determine if the notices and other communications to members were accurate, not misleading, and timely; if the membership vote was conducted in a fair and legal manner; and if the credit union has otherwise met the requirements of this subpart, including whether there is substantial evidence that the factors in section 205(c) of the Act are satisfied.

(b) After completion of this review, the Regional Director will approve or disapprove the proposed merger. The Regional Director will issue the approval or disapproval within 30 calendar days of receipt from the credit union of the certification of the result of the membership vote required under § 708a.307, unless the Regional Director extends the period as necessary to request additional information or review the credit union's submission. The Regional Director's approval is conditional on the credit union completing the merger in the timeframes required by § 708a.309.

(c) If the Regional Director disapproves the methods by which the membership vote was taken or the procedures applicable to the membership vote, the Regional Director may direct that a new vote be taken.

(d) A merging credit union may appeal a Regional Director's disapproval to the NCUA Board. The credit union must file the appeal within 30 days after receipt of the Regional Director's determination. The NCUA Board will act on the appeal within 120 days of receipt.

§ 708a.309 Completion of merger.

(a) After receipt of the approvals under §§ 708a.302 and 708a.308 a credit union may complete the merger.

(b) The credit union must complete the merger within one year of the date of NCUA approval under § 708a.308. If a credit union fails to complete the merger within one year the Regional Director will disapprove the merger. The credit union's board of directors must then adopt a new merger proposal and solicit another member vote if it still desires to merge.

(c) The Regional Director may, upon timely request and for good cause, extend the one year completion period for an additional six months.

(d) After notification by the board of directors of the bank that the merger has been completed, the NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of a Federal credit union.

§ 708a.310 Limits on compensation of officials.

No director or senior management official of an insured credit union may receive any economic benefit in connection with the merger of a credit union other than reasonable compensation and other benefits paid in the ordinary course of business.

§ 708a.311 Voting incentives.

If a merging credit union offers an incentive to encourage members to participate in the vote, including a prize raffle, every reference to such incentive made by the credit union in a written communication to its members must also state that members are eligible for the incentive regardless of whether they vote for or against the proposed merger.

§ 708a.312 Voting guidelines.

A merging credit union must conduct its member vote on merger in a fair and legal manner. NCUA provides the following guidelines as suggestions to help a credit union obtain a fair and legal vote and otherwise fulfill its regulatory obligations. These guidelines are not an exhaustive checklist and do not by themselves guarantee a fair and legal vote.

(a) *Applicability of State law.* While NCUA's merger rules apply to all mergers of Federally insured credit unions, Federally insured State chartered credit unions (FISCUs) are also subject to State law on mergers. NCUA's position is that no merger of a State chartered credit union is authorized unless permitted by State law, and also that a State legislature or State supervisory authority may impose merger requirements more stringent or restrictive than NCUA's. States that permit mergers may have substantive and procedural requirements that vary from Federal law. For example, there

may be different voting standards for approving a vote. While the Federal Credit Union Act requires a simple majority of those who vote to approve a merger, some States have higher voting standards requiring two-thirds or more of those who vote. A FISCU should be careful to understand both Federal and State law to navigate the merger process and conduct a proper vote.

(b) *Eligibility to vote.* (1) Determining who is eligible to cast a ballot is fundamental to any vote. No merger vote can be fair and legal if some members are improperly excluded. A merging credit union should be cautious to identify all eligible members and make certain they are included on its voting list. NCUA recommends that a merging credit union establish internal procedures to manage this task.

(2) A merging credit union should be careful to make certain its member list is accurate and complete. For example, when a credit union converts from paper record keeping to computer record keeping, some member names may not transfer unless the credit union is careful in this regard. This same problem can arise when a credit union merges from one computer system to another where the software is not completely compatible.

(3) Problems with keeping track of who is eligible to vote can also arise when a credit union merges from a Federal charter to a State charter or vice versa. NCUA is aware of an instance where a Federal credit union used membership materials allowing two or more individuals to open a joint account and also allowed each to become a member. The Federal credit union later converted to a State chartered credit union that, like most other State chartered credit unions in its State, used membership materials allowing two or more individuals to open a joint account but only allowed the first person listed on the account to become a member. The other individuals did not become members as a result of their joint account, but were required to open another account where they were the first or only person listed on the account. Over time, some individuals who became members of the Federal credit union as the second person listed on a joint account were treated like those individuals who were listed as the second person on a joint account opened directly with the State chartered credit union. Specifically, both of those groups were treated as non-members not entitled to vote. This example makes the point that a credit union must be diligent in maintaining a reliable membership list.

(c) *Scheduling the special meeting.* NCUA's merger rule requires a merging credit union to permit members to vote by written mail ballot or in person at a special meeting held for the purpose of voting on the merger. Although most members may choose to vote by mail, a significant number may choose to vote in person. As a result, a merging credit union should be careful to conduct its special meeting in a manner conducive to accommodating all members wishing to attend, including selecting a meeting location that can accommodate the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules. A credit union should conduct its meeting in accordance with applicable Federal and State law, its bylaws, Robert's Rules of Order or other appropriate parliamentary procedures, and determine before the meeting the nature and scope of any discussion to be permitted.

(d) *Voting incentives.* Some credit unions may wish to offer incentives to members, such as entry to a prize raffle, to encourage participation in the merger vote. The credit union must exercise care in the design and execution of such incentives.

(1) The credit union should ensure that the incentive complies with all applicable State, Federal, and local laws.

(2) The incentive should not be unreasonable in size. The cost of the incentive should have a negligible impact on the credit union's net worth ratio and the incentive should not be so large that it distracts the member from the purpose of the vote. If the board desires to use such incentives, the cost of the incentive should be included in the directors' deliberation and determination that the merger is in the best interests of the credit union's members.

(3) The credit union should ensure that the incentive is available to every member that votes regardless of how or when he or she votes. All of the credit union's written materials promoting the incentive to the membership must disclose to the members, as required by § 708a.311 of this part, that they have an equal opportunity to participate in the incentive program regardless of whether they vote for or against the merger. The credit union should also design its incentives so that they are available equally to all members who vote, regardless of whether they vote by mail or in person at the special meeting.

(e) *Solicitation of votes.* Some credit unions may wish to contact members who have not voted and encourage them to vote on the merger proposal. NCUA believes, however, that using credit union employees to solicit votes is problematic. Employees directed to solicit votes could easily neglect everyday duties critical to the credit union's safe and sound operation. Also, employees may very well feel pressured to solicit votes for the merger, regardless of whether or not they support the merger. Accordingly, NCUA strongly encourages credit unions to use an independent third party to solicit votes rather than diverting credit union employees from their usual duties.

PART 708b—MERGERS OF FEDERALLY INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

■ 15. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

■ 16. Amend § 708b.2 by removing alphabetical paragraph designations (a) through (k) and adding definitions of "conducted by an independent entity," "merger-related financial arrangement," "secret ballot," and "senior management official" in alphabetical order to read as follows:

§ 708b.2 Definitions.

* * * * *

Conducted by an independent entity means:

(1) The independent entity will receive the ballots directly from voting members.

(2) After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting.

(3) The independent entity will certify the final vote tally in writing to the credit union and provide a copy to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit union prior to certifying the final vote tally.

* * * * *

Merger-related financial arrangement means a material increase in compensation (including indirect compensation, for example, bonuses,

deferred compensation, or other financial rewards) or benefits that any board member or senior management official of a merging credit union may receive in connection with a merger transaction. For purposes of this definition, a material increase is an increase that exceeds the greater of 15 percent or $10,000.

* * * * *

Secret ballot means no credit union employee or official can determine how a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots.

Senior management official means the chief executive officer (who may hold the title of president or treasurer/manager), any assistant chief executive officer, and the chief financial officer.

* * * * *

■ 17–18. Amend § 708b.103 by revising paragraph (a)(5), redesignating paragraphs (a)(7) through (10) as paragraphs (a)(8) through (11), and adding new paragraph (a)(7) to read as follows:

§ 708b.103 Preparation of merger plan.

(a) * * *

(5) Explanation of any proposed share adjustments, and where the net worth ratio of the merging credit union is more than 500 basis points higher than the net worth ratio of the continuing credit union, an explanation of the factors considered in establishing the amount of any proposed adjustment or in determining no adjustment is necessary;

* * * * *

(7) Description of any merger-related financial arrangement, as defined in § 708b.2;

* * * * *

■ 19. In § 708b.104, revise paragraph (a)(8) to read as follows:

§ 708b.104 Submission of merger proposal to the NCUA.

(a) * * *

(8) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established annually by the Federal Trade Commission under 15 U.S.C. 18a(a)(2)(B)(i), currently $63.4 million, a statement about whether the two credit unions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not; and

* * * * *

■ 20. In § 708b.106, revise paragraph (a)(2)(ii) to read as follows:

§ 708b.106 Approval of the merger proposal by members.

(a) * * *

(2) * * *

(ii) Contain a summary of the merger plan, including, but not necessarily limited to, current financial statements for each credit union, a consolidated financial statement for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts, and a detailed description of any merger related financial arrangement, as defined in § 708b.2. The description must include the name and title of each individual recipient and an explanation of the financial impact of each element of the arrangement, including direct salary increases and any indirect compensation, such as any bonus, deferred compensation or other financial reward;

* * * * *

§ 708b.107 [Amended]

■ 21. Amend the heading to § 708b.107 by removing the word "Certificate" and adding the word "Certification" in its place.

■ 22. In § 708b.201, revise paragraph (c) to read as follows:

§ 708b.201 Termination of insurance.

* * * * *

(c) A majority of the credit union's members must approve a termination of insurance by affirmative vote. The vote must be taken by secret ballot and conducted by an independent entity.

* * * * *

■ 23. In § 708b.203, revise paragraphs (d), (f), and (g) to read as follows:

§ 708b.203 Conversion of insurance.

* * * * *

(d) Approval of a conversion of Federal to nonfederal insurance requires the affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The vote must be taken by secret ballot and conducted by an independent entity.

* * * * *

(f) The board of directors of the credit union and the independent entity that conducts the membership vote must certify the results of the membership vote to the NCUA within 14 calendar days after the deadline for receipt of votes. The certification must include the total number of members of record of the credit union, the number who voted on the conversion, the number who voted in favor of the conversion, and the number who voted against. The certification must be in the form specified in subpart C of this part.

(g) Generally, the NCUA will conditionally approve or disapprove the conversion in writing within 14 days after receiving the certification of the vote. The credit union must complete the conversion within six months of the date of conditional approval. If a credit union fails to complete the conversion within six months the Regional Director will disapprove the conversion. The credit union's board of directors, if it still wishes to convert, must then adopt a new conversion proposal and solicit another member vote.

* * * * *

■ 24. In § 708b.206, revise paragraph (b) to read as follows:

§ 708b.206 Share insurance communications to members.

* * * * *

(b) Every share insurance communication must contain the following conspicuous statement: "IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE WITH [insert name of private share insurer] AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK." The statement must:

(1) Appear on the first page of the communication where conversion is discussed and, if the communication is on an Internet Web site posting, the credit union must make reasonable efforts to make it visible without scrolling; and (2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

* * * * *

Note: The following revision to a document entitled "Corporate Federal Credit Union Bylaws," will not appear in the Code of Federal Regulations.

Section 4 of Article XI of the document entitled "Corporate Federal Credit Union Bylaws" is revised to read as follows:

Article XI. General

* * * * *

Section 4. (a) Subject to the limitations in 12 CFR 701.33(c)(5) through (c)(7) of the NCUA regulations, the corporate credit union may elect to indemnify to the extent authorized by (check one) ( ) law of the State of _____ or ( ) Model Business Corporation Act the following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties: (Check as appropriate) ( ) current officials, ( ) former officials, ( ) current employees, ( ) former employees.

(b) The corporate credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable State law or the Model Business Corporation Act.

(c) The term "official" in this bylaw means a person who is a member of the board of directors, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

* * * * *

[FR Doc. 2010–32115 Filed 12–27–10; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 906

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1207

RIN 2590–AA28

Minority and Women Inclusion

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or agency) is adopting a final rule to implement section 1116 of the Housing and Economic Recovery Act of 2008 (HERA). Section 1116 of HERA requires FHFA, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks) to promote diversity and the inclusion of women and minorities in all activities. The final rule implements the provisions of section 1116 of HERA that apply to Fannie Mae, Freddie Mac, and the Banks.

DATES: This rule is effective January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Equal Employment Opportunity and Diversity Director, *Eric.Howard@fhfa.gov,* (202) 408–2502, 1625 Eye Street NW., Washington, DC 20006; or Mark Laponsky, Deputy General Counsel, *Mark.Laponsky@fhfa.gov,* (202) 414–3832 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Effective July 30, 2008, HERA, Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal government.[1] HERA transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over Fannie Mae and Freddie Mac (collectively, Enterprises), and of the Federal Housing Finance Board (FHFB) over the Banks (collectively, regulated entities) and the Bank System's Office of Finance to FHFA.

The Safety and Soundness Act provides that FHFA is headed by a Director with general supervisory and regulatory authority over the regulated entities. FHFA is charged, among other things, with overseeing the prudential operations of the regulated entities. FHFA is also charged to ensure that the regulated entities: Operate in a safe and sound manner including maintenance of adequate capital and internal controls; foster liquid, efficient, competitive, and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulations, guidelines and orders issued under the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; carry out the respective missions through activities authorized and consistent with the Safety and Soundness Act and the authorizing statutes; and, engage in activities and operations that are consistent with the public interest.

Section 1116 of HERA amended section 1319A of the Safety and Soundness Act (12 U.S.C. 4520) to require FHFA to engage in certain activities to promote a diverse workforce. It also requires each regulated entity to establish an Office of Minority and Women Inclusion, or designate an office, responsible for carrying out the requirements of the section and such requirements and standards established by the Director. Section 1319A of the Safety and Soundness Act requires the regulated entities to promote diversity in all activities and at every level of the organization, including management, employment and contracting. Furthermore, 12 U.S.C. 1833e, as amended, and Executive Order 11478 require FHFA and the regulated entities to promote equal opportunity in employment and contracting.

On January 11, 2010, FHFA published a proposed rule on Minority and Women Inclusion to implement section 1116 of HERA, 12 U.S.C. 4520. The proposal set forth minimum requirements for regulated entity diversity programs as well as requirements for reporting on these programs. The proposal also set forth the minimum requirements for the agency's own diversity program.

The proposed rule consisted of the following subparts: Subpart A addressed matters of general application; subpart B applied only to FHFA's internal operational requirements under section 1116 of HERA; and subpart C implemented the requirements under section 1116 of HERA for the regulated entities. FHFA initially established a 60-day comment period but, at the request of the public, extended that period another forty-five (45) days.[2] The extended comment period closed on April 26, 2010.

FHFA received 23 comment letters to the proposed rule from individuals and entities. Three letters came from private citizens. Fannie Mae, Freddie Mac, and eleven of the Banks submitted comment letters. The Banks of Atlanta, Boston, Chicago, Dallas, Indianapolis, New York, San Francisco, Seattle, Topeka, Des Moines and Pittsburgh sent comments that were generally similar. The Bank System's fiscal agent, the Office of Finance, also submitted a comment. The following trade associations or potential vendors to the regulated entities submitted comment letters: The National Association of Hispanic Real Estate Professionals

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, section 1101 of HERA.

[2] *See* 75 FR 10446, March 8, 2010.

(NAHRE); the New America Alliance (NAA); FinaCorp Securities; Trade Street Advisors (TSA); the Asian Real Estate Association of America (AREAA); and the National Association of Securities Professionals (NASP). The comments were extensive, thoughtful and significant. All comments were considered. None of the comments addressed the provisions of subpart B with respect to the requirements for FHFA's internal diversity management program. A discussion of significant comments as they relate to the provisions of the final rule follows.

II. Reservation of Subpart B

This regulation finalizes subpart A, addressing matters of general applicability, and subpart C, addressing regulation of diversity at the regulated entities and the Bank System's Office of Finance. FHFA has decided to reserve subpart B of the proposed rule. After the comment period for the proposed rule closed, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (Dodd-Frank) was enacted. Section 342 of Dodd-Frank expands on the requirements of HERA. Unlike HERA, Dodd-Frank requires the agency to establish and staff a separate Office of Minority and Women Inclusion responsible for carrying out operational diversity requirements. The requirements of Dodd-Frank are similar, but not identical to HERA and apply to several other financial regulatory agencies. FHFA plans to finalize subpart B once it has reconciled the requirements of HERA section 1116, the reserved subpart B to this rule, and section 342 of Dodd-Frank. FHFA wants to ensure that any proposed requirements under subpart B of the rule will facilitate the appropriate alignment of the agency's diversity and inclusion program with the programs the other agencies subject to section 342 of Dodd-Frank will be implementing.

III. Final Rule—Subparts A and C

FHFA responds to specific concerns below as it explains aspects of the rule commented upon. After considering the comments received in response to the proposed rule, FHFA is adopting a final rule implementing the provisions of section 1116 of HERA that apply to Fannie Mae, Freddie Mac, and the Banks.

A. Comments on FHFA's Authority

All eleven of the Banks that submitted comments and the Office of Finance commented that the proposed rule exceeds FHFA's authority under HERA in several respects, but most notably by including any coverage of disabilities in the rule. The comments suggest that coverage of the rule must be strictly limited to HERA's identification of minorities and women.

FHFA disagrees. HERA contains more than sufficient authority for the Director to expand the coverage of the rule. Several provisions of HERA make clear that the provisions of section 1116 are minimum standards on which the Director may expand as he determines appropriate. Section 1116, in explaining the responsibilities of a regulated entity's Office of Minority and Women Inclusion, requires the office to "carry out this section *and all matters of the entity relating to diversity* * * * in accordance with such standards and requirements as the Director shall establish." 12 U.S.C. 4520(a) (emphasis added). The reference to "this section and all matters of the entity relating to diversity" signals that Congress did not intend the terms of the section to limit the Director's authority. They indicate an understanding that "all matters of the entity relating to diversity" is not limited to matters relating to minorities and women. That understanding is buttressed by the unqualified authority for the Director to establish "such standards and requirements" as he determines appropriate.

The Director's authority does not stop at the language of section 1116. The Director has broad general regulatory authority (12 U.S.C. 4511(b)(2)) which is required to include a principal duty of "oversee[ing] the prudential operations of each regulated entity." 12 U.S.C. 4513(a)(1)(A). Moreover, the scope of the Director's authority includes "exercis[ing] such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity." 12 U.S.C. 4513(a)(2)(B).

The Director believes that the anti-discrimination provisions in the Rehabilitation Act of 1973 (29 U.S.C. 791, 793, 794, and 794a) and the congressional findings concerning extensive discrimination and barriers to economic participation faced by individuals with disabilities underlying the Americans with Disabilities Act (42 U.S.C. 12101) (ADA) constitute sufficient reason to include individuals with disabilities and disabled-owned businesses within the scope of this final rule. The final rule includes requirements for inclusion and diversity with respect to individuals with disabilities.

B. Disabilities Terminology

In several instances, the proposed rule used the term "disabled" to refer to the community of individuals with disabilities. The final rule changes that terminology to "individuals with disabilities" or "persons with disabilities," where appropriate. Consistent with current convention and usage in the ADA, the final rule no longer refers to individuals with disabilities as "disabled" and the definition of "disabled" has been removed. The term "disabled-owned business" is separately defined and is retained for ease of use.

C. Disabilities Data Reporting

Several commenters requested removal of data reporting requirements with respect to disabilities. FHFA found their comments compelling to the extent that some elements of the proposed rule create unnecessary tension with medical privacy and anti-discrimination statutes. Therefore, data reporting with respect to disabilities is significantly reduced in the final rule, as discussed below. However, the rule retains some data reporting requirements and continues to require outreach to the individuals with disabilities.

D. Scope of Contracts Included Under the Rule

A significant number of commenters requested that the agency clarify the scope of the contracts subject to the requirements of the rule. Several commenters proposed that the agency limit the rule to contracts for services. Several others proposed that the final rule apply to contracts for goods and services, but as described by the Federal Deposit Insurance Corporation's own outreach regulation.[3] Some commenters raised serious concerns about applying the rule to loans, advances and other contracts that are for neither goods nor services.

Section 1116(c) of HERA, entitled "Applicability," provides: "This section shall apply to all contracts of a regulated entity for services of any kind, including services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services." This makes clear that the section covers all contracts for services. However, the section does not limit the scope to just contracts for services as a number of commenters asserted. On the contrary, section 1116(b) seeks inclusion and diversity "in all business and activities of the regulated entity at all levels, including in procurement, insurance

[3] *See* Federal Deposit Insurance Corporation regulation 12 CFR Part 361 Minority and Women Outreach Program Contracting.

and all types of contracts (including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale, and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives)." An interpretation that limits coverage to contracts for services makes section 1116(b) a nullity. Even restricting coverage to contracts for goods and services severely limits section 1116(b) beyond the plain language of the statute.

However, FHFA understands the practical difficulties in applying a rule to cover contracts for services, contracts for goods, and contracts for all other subjects, such as financial contracts, loans, financial transactions, financial instruments, realty, deeds, mortgages, letters of credit, confidentiality and non-disclosure agreements, software and other licenses, corporate operating agreements and similar arrangements, and the Banks' advances. HERA, by requiring every contract for services to be covered but not using the same inclusive language for all contracts, allows for reasonable distinctions. FHFA believes that contracts for goods that are for more than minimal amounts, as well as contracts for services, present great opportunities for the regulated entities and the Office of Finance to advance the interests of diversity. The final rule requires demographic data reporting and all other relevant elements in the regulation for every contract for services and every contract for goods that equals or exceeds $10,000 in annual value (whether as a single contract or as a series of contracts or renewals with a single vendor). The final rule exempts from the material clause and demographic data reporting requirements of §§ 1207.21(b)(6), 1207.22 and 1207.23(b)(11) through 1207.23(b)(13) all other contracts. The regulated entities' diversity outreach efforts in contracting under § 1207.21(c), however, should seek to include every type of contract. Paragraph (b) has been added to § 1207.3, "Limitations," to reflect these distinctions. To further ensure the reasonable implementation of this limitation, section 1207.21(b) is expanded to require that each regulated entity and the Office of Finance identify the types of contracts it considers exempt under § 1207.3(b).

E. Business Certifications

A few commenters asked for guidance with respect to what certifications FHFA would accept for minority-, women-, and disabled-owned businesses. Other commenters requested clarity with respect to identifying qualified businesses. The proposed rule noted that the definition of "disabled-owned businesses" is satisfied by a business that qualifies with the U.S. Small Business Administration (SBA) as a Service-Disabled Veteran-Owned Small Business Concern. Other methods of certification exist through State government entities, trade associations and specialty organizations, and chambers of commerce, such as the US Business Leadership Network, a national disability organization of businesses, or the National Association of Minority and Women Owned Law Firms.

Despite inherent shortcomings in self-certification, FHFA believes that the regulated entities and the Office of Finance should be allowed to rely on a self-certification from a business so long as both the certification and the reliance are in good faith. Nonetheless, FHFA prefers that the regulated entities rely on certifications from qualified independent third parties.

F. Quotas and Demographic Benchmarks

Several commenters urged FHFA to disclaim the use of demographic quotas, while other commenters urged the agency to establish numerical targets and goals. Nothing in the proposed rule, or in the final rule, envisions or suggests the use of quotas. Additionally, a generally applicable regulation is not the vehicle through which to prescribe remedial targets for specific circumstances at particular entities. FHFA will not forego the use of any legally permissible standards, methods, tools and techniques that it determines appropriate to analyze data reported and to measure progress or adherence to standards. Diversity at each regulated entity and the Office of Finance needs to be evaluated separately. FHFA is not willing to impose an artificial standard on all entities. Deficiencies at a regulated entity or the Office of Finance will be addressed as they arise on a case-by-case and issue-by-issue basis. The use of remedies to address the deficiencies will be tailored to fit the circumstances at hand.

Several commenters requested that FHFA use regional demographic data when analyzing workforce diversity and the progress of each regulated entity. FHFA responds by noting that it will use the data it considers appropriate in the context of what it is evaluating. Regional demographic data are appropriate for some purposes, but not for all. By way of example only, it would be appropriate to apply national data when recruiting for employees or soliciting for contractors on a national basis. Under no circumstance will FHFA accept regional demographic data as a means of justifying the failure to make efforts to advance diversity.

G. Comments Disputing the Public Policy Reflected in Section 1116 and the Proposed Rule

One private citizen commented that any approach to inclusion and diversity that recognizes characteristics like gender and race are misguided and counterproductive. Another private citizen commented that FHFA should not require the creation of Offices of Minority and Women Inclusion and should let existing agencies, such as the Equal Employment Opportunity Commission (EEOC), regulate diversity at the regulated entities.

Both of these comments are mistaken and take issue with the public policy expressed by Congress in section 1116 of HERA. Congress directed each regulated entity to establish an Office of Minority and Women Inclusion, or designate an office to perform the functions required by the statute of such an office. Congress also required that the regulated entities pay attention to and report on gender and racial diversity in their activities including in employment and contracting. FHFA does not have the discretion to ignore the statute. Moreover, HERA gives certain regulatory oversight and enforcement authority to FHFA to broadly encourage diversity in employment, contracting, and all business and activities at the regulated entities which are not otherwise subject to such regulation.

Existing agencies do not, as one private citizen suggested, regulate diversity in employment or contracting at the regulated entities. The EEOC is an enforcement agency to which certain demographic data is reported. It files lawsuits and investigates and processes charges of discrimination in employment against businesses for violations of anti-discrimination laws. It publishes reports about employment discrimination as well as diversity trends and progress throughout the country and in specific segments of the economy. The EEOC's regulations provide guidelines for addressing and avoiding employment discrimination and it issues recommended best practices and legal policy announcements. It does not exercise regulatory oversight of diversity. Furthermore, its authority is limited to discrimination in employment. The EEOC has no authority with respect to contracting in any industry. Similarly, unlike Federally insured depository

institutions, FHFA's regulated entities are not considered government contractors subject to Executive Order 11246, under which the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) exercises mainly enforcement authority with respect to discrimination on specific bases at many financial institutions and other companies. In short, the responsibilities given to FHFA are not—as the commenter suggested—duplicative of existing regulatory regimes.

Section 1207.1 Definitions

In several instances, the proposed rule used the term "disabled" to refer to the community of individuals with disabilities. The final rule uses the term "individuals with disabilities" or "persons with disabilities" instead of "disabled" where appropriate. This change is made consistent with current convention and usage in the ADA. The final rule no longer refers to individuals with disabilities as "disabled" and the definition of "disabled" has been removed. The term "disabled-owned business" is separately defined and is retained for ease of use.

Seven Banks commented that the proposed definition of "business and activities" is too broad, exceeds the scope of HERA, and makes compliance with some sections of the proposed rule impossible.

FHFA disagrees. The definition is intentionally broad and all-inclusive because the statute's description of covered activities is broad and all-inclusive. Section 1116 of HERA applies the diversity and inclusion requirements to "all matters of the entity relating to diversity in management, employment and business activities * * *" 12 U.S.C. 4520(a). It extends to "all business and activities * * * at all levels, including in procurement, insurance and all types of contracts (including contracts for the issuance of debt, equity or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives)." 12 U.S.C. 4520(b). The breadth of the definition is necessary to ensure that "all types of contracts," management activities, employment, procurement and "all contracts * * * for services of any kind" (12 U.S.C. 4520(c)) in fact are captured by the regulation. The final rule retains the proposed definition.

Seven Banks identified as problematic the definition of "disabled-owned business" because it relies on inherently unreliable self-identifications. Another regulated entity suggested expressly permitting the use of voluntary commercially reasonable efforts to identify qualified populations. Self-identifications, while not ideal, are commonly relied upon, including in the decennial censuses. With respect to disabilities, certain inquiries cannot be made and some disabilities are not observable. Self-identification actually is a preferred method for classification. FHFA does not believe that further clarification is needed, having addressed the issues of business certifications above. The final rule retains the proposed definition.

Five regulated entities commented that the proposed definition of "minority" is inconsistent with HERA, which cross-references section 1204 of the Financial Institutions Reform Recovery and Enforcement Act of 1989. The commenters are correct. Although under the Director's authority, FHFA can require reporting with respect to classifications that are beyond those included in the mandatory definition of "minority," the final rule conforms the definition of "minority" to that referenced in HERA.

One Bank requested that FHFA limit the definition of "disability" by disregarding the so-called "regarded as" alternative contained in both the Rehabilitation Act of 1973 [4] and the ADA.[5] FHFA declines to adopt the suggestion. The definition incorporates standards developed by authorities responsible for enforcing the ADA and FHFA finds no reason to create a narrower definition than that which Federal law has recognized for more than thirty (30) years.

Section 1207.2 Policy, Purpose and Scope

Nine Banks and the Office of Finance requested that FHFA limit the phrase "to the maximum extent possible" to actions that are consistent with other laws and accounting for safety and soundness concerns. FHFA believes that compliance with other applicable laws is an inherent qualification on any action and need not be expressed in the final rule. With respect to safety and soundness considerations, the final rule reflects that safety and soundness are concerns that should be balanced when implementing the phrase "to the maximum extent possible." However, the goals of inclusion and diversity are not inconsistent with safety and soundness. Therefore, safety and soundness should not be used, and FHFA will not accept it, as a justification for the regulated entities and the Office of Finance failing to make efforts to advance inclusion and diversity.

The proposed rule did not include individuals with disabilities in describing FHFA's policy to promote nondiscrimination, diversity, and inclusion. The final rule corrects that omission, consistent with the rest of the rule. Additionally, the final rule clarifies that the described policy is a minimum standard. The final rule also removes references to any standards pertaining to FHFA in § 1207.2(b) and (c) since subpart B in which the standards were addressed has been reserved.

Section 1207.20 Office of Minority and Women Inclusion

Six Banks requested clarification that an entity would be in compliance with paragraph (a) of this section if some of the responsibilities of § 1207.20 were performed by employees outside of the designated Office of Minority and Women Inclusion. The final rule retains the language from the proposed rule. However, FHFA does not believe it necessary for an Office of Minority and Women Inclusion to operate in isolation from other parts of the entity. As long as the Office of Minority and Women Inclusion, or other designated office, remains responsible and accountable for directing and implementing the entity's diversity and inclusion program, other units of the entity may assist as required. FHFA encourages efforts to integrate respect for and attention to diversity and inclusion throughout each regulated entity.

Five Banks objected to the use of the phrase "standards and guidance" in § 1207.20(c). The final rule uses the phrase "standards and requirements" to conform to the language in 12 U.S.C. 4520(a). Nonetheless, FHFA intends to use various tools to implement this regulation and guidances may be among them, when appropriate.

Section 1207.21 Equal Opportunity in Employment and Contracting

Eight Banks commented that paragraph (a) of this section should not be broadened beyond the demographic classifications of "minority" and gender, noted in HERA. Section 1207.21(a) requires an equal opportunity notice and FHFA declines to narrow the identification of so-called "protected classes" recognized in an equal opportunity notice. FHFA notes that the

[4] *See School Board of Nassau County v. Arline,* 480 U.S. 273, 279 (1987) (quoting the Rehabilitation Act definition of "handicapped individual" as amended in 1974).

[5] 42 U.S.C. 12102(2).

exact language of the notice is not prescribed, but making this notice exclusive, rather than inclusive, of classifications is inconsistent with encouraging diversity. If anything, the proposed rule's requirement is under-inclusive, as it only addresses protected classifications recognized in Federal employment discrimination laws. Many businesses, perhaps some regulated entities, already have policies that recognize equal opportunity for other classifications, such as marital or parental status, sexual orientation or political affiliation. The final rule clarifies that the status classifications required in the notice establishes a minimal level of inclusiveness and additional coverage is voluntary to the entity. The notice should be supplemented and amended from time-to-time as additional protected classifications are identified in Federal anti-discrimination laws. For additional clarity, the final rule also requires the entity to confirm its commitment against retaliation, a fundamental principle for realizing the objective of equal opportunity.

Eight regulated entities objected to the "alternative media" publication requirements in paragraphs (a) and (b) of this section as overly burdensome.

FHFA disagrees. The proposed rule language required the regulated entities and the Office of Finance to make certain notices, policies and procedures readily accessible to the public "(including through alternative media—*e.g.,* Braille, audio—as necessary)." The language with respect to Braille and audio formats is illustrative of accessibility and not prescriptive. The proposed rule was clear that if alternative media formats were "necessary," they should be used. FHFA has decided to use the phrase "alternative media formats, as necessary," to make it very clear that the language does not limit the types of alternative formats a regulated entity or the Office of Finance should use when necessary to make notices, policies and procedures accessible.

One regulated entity commented that FHFA should modify paragraphs (b) and (c) of this section to clarify that demographic preferences in hiring and contracting are not required. FHFA declines to make the requested modification because it is unnecessary. Nothing in the proposal or the final rule requires preferences. However, the comment alerted FHFA to the fact that recruiting and outreach to sources for applicants for employment who are minorities, women or individuals with disabilities had been omitted from the proposal. To correct this oversight, the final rule adds a clause to paragraph (b)(5) of this section requiring the regulated entities and the Office of Finance to encourage and engage in recruiting and outreach for applicants for employment from minorities, women and individuals with disabilities.

Twelve of the regulated entities submitted comments objecting to paragraph (b)(3) of this section requiring alternative dispute resolution mechanisms for complaints of discrimination. The requirement is procedural. It does not create a substantive right, but provides a process that is known for both the regulated entity and claimants to resolve disputes early. However, FHFA does not intend to micro-manage the affairs of the regulated entities and the Office of Finance. If, in the exercise of management judgment, a regulated entity or the Office of Finance determines that an alternative dispute resolution mechanism is advisable, FHFA encourages it to make the process transparent and known through the entity's policies. The final rule requires internal procedures for accepting and resolving complaints of discrimination, but does not require any particular design or the use of alternative dispute resolution options.

Ten Banks contended that the reasonable accommodation procedure requirement of paragraph (b)(4) of this section exceeds HERA's scope and creates substantive rights for individuals with disabilities.

FHFA disagrees. The substantive and enforceable right is created by the American with Disabilities Act.[6] The final rule requires the regulated entities and the Office of Finance to establish transparent procedures for fulfilling their legal obligations under the ADA to provide reasonable accommodations to employees and applicants for employment. The final rule retains the language of the proposal.

Eleven Banks and the Office of Finance objected to the proposed paragraph (b)(6) of this section requiring that all contracts contain a material clause committing the contractor to the principles of non-discrimination and diversity and that all contractors require such clauses in subcontracts for goods and services provided to the regulated entities. The Banks believe that requiring such clauses places them at a competitive disadvantage in contracting; that such clauses are unenforceable; and that the requirement interferes with a Bank's and a contractor's right to contract. The final rule retains the requirement. As a matter of public policy FHFA believes that any regulated entity or the Office of Finance, as a Federal government sponsored enterprise, should decline to enter into business with contractors who find such clauses objectionable. Similar clauses have been required in government contracts under Executive Order 11246 for more than (forty) 40 years. Unlike the requirements for government contracts, FHFA has not prescribed specific language to be included. Each entity is free to develop the specific language of its own required clause. In developing the clause, each entity can address the difficulties it believes exist for enforcement. These clauses create contractual conditions that a contractor or subcontractor can accept or reject. FHFA does not believe that such provisions pose any greater enforcement difficulty than any other contractual condition. Nevertheless, FHFA recognizes that in some contexts and for limited types of contracts these clauses may not be commercially reasonable to obtain. Therefore, § 1207.3(b) establishes certain limitations on the material clause requirement.

Nine regulated entities asked FHFA to confirm that the required standards and procedures for publication of contracting opportunities under paragraph (c)(2) of this section may include reasonable exceptions identified by the regulated entity or the Office of Finance. The commenters were concerned that the expansive scope of the proposed regulation could hinder their ability to engage in certain business transactions. Although the commenters did not provide options for addressing or implementing their suggestions, FHFA recognizes that the requirements under paragraph (c)(2) of this section could result in unintended hardships for the regulated entities and the Office of Finance.

FHFA finds that the publication, solicitation and competitive bidding processes are critical to ensuring broad and fair participation of potential vendors, thereby enhancing the opportunities for a more diverse pool of contractors. The final rule retains the publication and bidding process requirements. However, each regulated entity and the Office of Finance may exercise reasonable discretion to develop thresholds, exceptions, or limitations for implementing paragraph (c)(2) of this section. A new § 1207.21(b)(7) requires the regulated entities and the Office of Finance to develop policies and procedures that address the rationale, necessity, and parameters for employing any thresholds, exceptions, or limitations

[6] 42 U.S.C. 12112(b)(5).

with respect to implementing paragraph (c)(2) of this section. The thresholds, exceptions, or limitations for implementing § 1207.21(c)(2) must be commercially reasonable and consistent with the intent of HERA. Under the express terms of HERA, procedures to "review and evaluat[e] * * * contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant." 12 U.S.C. 4520(b). The final rule retains, in § 1207.21(c)(3), the requirement for considering diversity.

Section 1207.22 Regulated Entity and Office of Finance Reports

Seven Banks asked that the final rule enumerate the expected deliverables necessary for the preliminary status report, as required by paragraph (a)(1) of this section.

FHFA declines to expand on the requirement as requested, because the expansion is unnecessary. Paragraph (a)(1) of this section, as proposed, required the preliminary report to describe "actions taken, plans for and progress toward implementing the provisions of 12 U.S.C. 4520 and this part; and including to the extent available the data and information required by this part to be included in an annual report." The proposed rule provides sufficient information for the regulated entities and the Office of Finance to understand what is required to be included in the preliminary reports.

Nine regulated entities and the Office of Finance commented on the timing of reports. Some requested that the annual report required by paragraph (c) of this section not be required until at least 120 days after the end of a reporting period. Others requested that the due date for submission be April 1 of each year rather than February 1 and beginning in 2012 rather than 2011. Others requested that the first annual reporting period begin on the date that the final rule is effective while others suggested an October 1 to September 30 reporting period. The comments are far from uniform, but they illustrate that the regulated entities are likely to require significantly different lengths of time to place in operation an infrastructure capable of providing the information required by the rule. Therefore, FHFA has determined that the transition period before the filing of preliminary reports should be lengthened from 90 to 180 days after the effective date of the final rule.

The commenters also presented various and not always consistent alternative reporting periods and dates for their annual accomplishment reports. FHFA understands the challenges the regulated entities and the Office of Finance may encounter when submitting their annual accomplishment reports. As a result, the first annual report under the rule will be required on March 1, 2012, and will report on the period of January 1 through December 31, 2011. The March 1 date for annual reports provides a minimal amount of time for the agency to analyze information and include elements in its own report to Congress. The January 1 through December 31 reporting period maintains consistency with the periods covered in its annual reports to Congress.

One regulated entity suggested that the rule consolidate the annual summary required by § 1207.22(d) and the annual report under § 1207.22(c). Another requested that the annual report coincide with the due date for an annual financial report.

FHFA declines to adopt either suggestion. The annual report and the annual summary serve different purposes. The summary is the minimum information that HERA requires to be reported along with each entity's annual report to the Director. The annual report is more detailed and provides greater specificity to aid the agency in fulfilling its regulatory responsibilities.

One regulated entity requested modification to paragraph (b) of this section to provide that the information in annual reports will not be disclosed to the public. Other commenters requested that all information gathered from the regulated entities and the Office of Finance be publicly available. Another regulated entity argued that FHFA should acknowledge that it is bound by other statutes to maintain the confidentiality of some of the information reported, such as reports filed with the EEOC. The applicability of this provision to FHFA is not clear, but FHFA does not intend to publicly release the subject information and data.

FHFA considers the reports and data to be related to examinations and examination, operation, or condition reports. In general, FHFA will consider all the information and data attributed to a particular regulated entity to be non-public, subject to Freedom of Information Act Exemption (b)(8) and to the examination privilege. The agency does not intend to make attributed information public. However, FHFA intends to use the information and data arrayed or aggregated in a variety of ways, without attribution to specific institutions, in order to identify trends, success or lack of success, or best practices each regulated entity can use to assess or improve its own programs. Additionally, FHFA may use such unattributed information in various formats to inform the public on such trends, success, lack of success and best practices among the regulated entities. As a result, FHFA does not believe that any change to the rule is required in this respect.

Two regulated entities asked for clarification of the term "third-party contractor" as used in paragraph (d) of this section. "Third-party contractor" is an undefined term used in 12 U.S.C. 4520(d). In the context of this part, FHFA considers the term to be co-extensive with the term "contractor" and deletes "third-party" from the final rule. The intent is to capture the various types of contracts entered into between a regulated entity and another person or entity independent of the regulated entity, as limited by § 1207.3(b) of the final rule.

One commenter recommended that the final rule should establish a threshold amount and require large contractors to report on any subcontracting activities. FHFA believes the purpose of the suggestion is an effort to ensure that businesses owned by minorities, women and individuals with disabilities are not used as fronts to steer a majority of the "real" work and business under a contract to other businesses. However, FHFA does not believe that the final rule should establish such detailed requirements. The good faith requirements described above with respect to business certifications are in part intended to address the concern. Moreover, FHFA expects the regulated entities and Office of Finance to develop their contracting policies to ensure that methods are present for verifying that the performing contractor is in fact the qualified minority-, women- or disabled-owned business.

Section 1207.23 Annual Reports—Format and Contents

Eleven regulated entities and the Office of Finance, to differing degrees, objected to voluntary self-identification by employees, directors, and contractors. The commenters objected to the use of voluntary self-identification because it could yield unreliable data for the annual reports. Self-identification is an accepted means of gathering demographic data. The decennial censuses rely on self-identification. The EEOC and the OFCCP also recognize that self-identification, as well as visual observation identification, are among acceptable means of gathering demographic data. This issue also is addressed above with respect to the

definition of "disabled-owned business" and business certifications. The final rule is not changed to address this objection.

Twelve regulated entities requested removal of § 1207.23 (b)(3) because the regulated entity will not be able to provide the disability classification for individuals who applied for, but were not offered, employment. The comments raise a significant issue in that anti-discrimination laws severely restrict pre-employment inquiries about disabilities. Consequently, the final rule deletes from paragraphs (b)(3) and (4) of this section references to reporting by disability classification.

Nine Banks requested clarification of paragraphs (b)(3), (7) and (8), of this section allowing regulated entities to use minimum job qualifications as a threshold for reporting the number of individuals applying for employment or promotion. This issue relates to the identification of who is an applicant under anti-discrimination in employment laws. FHFA believes that the regulated entities should follow the guidance provided by the EEOC and the OFCCP in determining what constitutes an applicant requiring reporting. It is not FHFA's charge or intent to interpret the statutes enforced by other agencies.

Eleven regulated entities commented that requiring data on employment terminations under § 1207.23(b)(5) is inconsistent with the proposed rule's statement that personally identifiable information is not required.

FHFA disagrees. The provision requires that the entities present a simple numerical tally of employment terminations, whether voluntary or involuntary. It does not require the entities to submit any identifiable information. While it is theoretically possible that someone with access to attributed data from a sufficiently small population of terminations and with pre-existing knowledge of personally identifiable information on an entity's workforce could deduce the identity of a terminated employee, the prospect is remote and too attenuated to require any adjustment to the rule. The provision does not require personally identifiable information and the entities should not report personally identifiable information.

Eleven regulated entities requested removal of the requirements in § 1207.23(b)(10) with respect to outreach to low-income and inner-city populations, activities to provide financial literacy education and efforts to provide contracting technical assistance. These activities are not required of the regulated entities by HERA and are removed from paragraph (b)(10) of this section. However, if a regulated entity engages in such activities, FHFA encourages the entity to report on them.

One Bank requested modification to §§ 1207.23 (b)(15) and (16) to remove the requirement to report information about complaints and claims of discrimination, the outcomes of those complaints and claims, and the amounts paid in settlements and judgments. FHFA believes that this data is important for identifying trends and the costs of discrimination claims at each regulated entity separately and in aggregate. The final rule retains the proposed provision.

Nine regulated entities requested removal of §§ 1207.23(b)(18) and (19) as beyond the scope of the reporting requirements of 12 U.S.C. 4520(d). The final rule retains both provisions which require narrative self-analyses of the entity's progress, successes, needs for improvement and plans for fulfilling the policy and purpose of the regulation. Neither provision is precluded by HERA; both are consistent with FHFA's regulatory responsibilities.

Section 1207.24 Enforcement

After review of all comments, FHFA concluded that no change to this section is needed.

Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. Comments were solicited on these differences in relation to the proposed rule.

A significant difference exists in the nature of advances and other financial contracts that the entities may enter. Specifically, the Banks' advances are contracts that are entered between a Bank and its members only, limiting the universe of potential counterparties. Because advances are neither contracts for goods nor contracts for services, they are carved out of reporting requirements under the rule. The final rule also provides the entities latitude to exclude contracts from solicitation and bidding requirements on commercially reasonable bases, so long as those exclusions are identified. The unique character of advances and the restricted market for them provide some reasons that a Bank might exclude them from outreach, solicitation and bidding requirements. However, the demographic profile of the restricted market should not be an excuse to forego diversity efforts. Outreach and recruiting to banks that are owned by diverse individuals is encouraged, which in turn diversifies the market for advances. The final rule reflects the flexibility needed to address these differences.

The Director has considered the above factors and comments and concluded that none of the unique factors relating to the Banks warrants establishing different treatment under this final regulation.

IV. Regulatory Impact

Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations shall include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final regulation under the Regulatory Flexibility Act. FHFA certifies that the final regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the regulated entities and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 906

Government contracts, Minority businesses.

12 CFR Part 1207

Disability, Discrimination, Equal employment opportunity, Government contracts, Minority businesses, Office of Finance, Outreach, Regulated entities.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency amends chapters IX and XII of Title 12, Code of Federal Regulations, as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 906—OPERATIONS

■ 1. The authority citation for part 906 continues to read as follows:

Authority: 12 U.S.C. 4516.

Subpart C—[Removed and Reserved]

■ 2. Remove and reserve subpart C, consisting of §§ 906.10 through 906.13.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter A—Organization and Operations

■ 3. Add part 1207 to subchapter A to read as follows:

PART 1207—MINORITY AND WOMEN INCLUSION

Subpart A—General

Sec.
1207.1 Definitions.
1207.2 Policy, purpose, and scope.
1207.3 Limitations.
1207.4–1207.9 [Reserved].

Subpart B—Minority and Women Inclusion and Diversity at the Federal Housing Finance Agency

1207.10–1207.19 [Reserved].

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

1207.20 Office of Minority and Women Inclusion.
1207.21 Equal opportunity in employment and contracting.
1207.22 Regulated entity and Office of Finance Reports.
1207.23 Annual reports—format and contents.
1207.24 Enforcement.

Authority: 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

Subpart A—General

§ 1207.1 Definitions.

The following definitions apply to the terms used in this part:

Business and activities means operational, commercial, and economic endeavors of any kind, whether for profit or not for profit and whether regularly or irregularly engaged in by a regulated entity or the Office of Finance, and includes, but is not limited to, management of the regulated entity or the Office of Finance, employment, procurement, insurance, and all types of contracts, including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of mortgage and securities portfolios, the making of equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of affordable housing or community investment programs and initiatives.

Director means the Director of FHFA or his or her designee.

Disability has the same meaning as defined in 29 CFR 1630.2(g) and 1630.3 and Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act.

Disabled-owned business means a business, and includes financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers, and providers of legal services—

(1) Qualified as a Service-Disabled Veteran-Owned Small Business Concern as defined in 13 CFR 125.8 through 125.13; or

(2) More than fifty percent (50%) of the ownership or control of which is held by one or more persons with a disability; and

(3) More than fifty percent (50%) of the net profit or loss of which accrues to one or more persons with a disability.

FHFA means the Federal Housing Finance Agency.

Minority means any Black (or African) American, Native American (or American Indian), Hispanic (or Latino) American, or Asian American.

Minority-owned business means a business, and includes financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers and providers of legal services—

(1) More than fifty percent (50%) of the ownership or control of which is held by one or more minority individuals; and

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more minority individuals.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System.

Reasonable accommodation has the same meaning as defined in 29 CFR 1630.2(o) and Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act.

Regulated entity means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, any Federal Home Loan Bank and/or any affiliate thereof that is subject to the regulatory authority of FHFA. The term "*regulated entities*" means (collectively) the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and/or any affiliate Federal Home Loan Bank and/or any affiliate thereof that is subject to the regulatory authority of FHFA.

Women-owned business means a business, and includes financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers and providers of legal services—

(1) More than fifty percent (50%) of the ownership or control of which is held by one or more women;

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more women; and

(3) A significant percentage of senior management positions of which are held by women.

§ 1207.2 Policy, purpose, and scope.

(a) *General policy.* FHFA's policy is to promote non-discrimination, diversity and, at a minimum, the inclusion of women, minorities, and individuals with disabilities in its own activities and in the business and activities of the regulated entities and the Office of Finance.

(b) *Purpose.* This part establishes minimum standards and requirements for the regulated entities and the Office of Finance to promote diversity and ensure, to the maximum extent possible in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants,

investment consultants, and providers of legal services.

(c) *Scope.* This part applies to each regulated entity's and the Office of Finance's implementation of and adherence to diversity, inclusion and non-discrimination policies, practices and principles.

§ 1207.3 Limitations.

(a) Except as expressly provided herein for enforcement by FHFA, the regulations in this part do not, are not intended to, and should not be construed to create any right or benefit, substantive or procedural, enforceable at law, in equity, or through administrative proceeding, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, a regulated entity or the Office of Finance, their officers, employees or agents, or any other person.

(b) The contract clause required by section 1207.21(b)(6) and the itemized data reporting on numbers of contracts and amounts involved required under §§ 1207.22 and 1207.23(b)(11) through § 1207.23(b)(13) apply only to contracts for services in any amount and to contracts for goods that equal or exceed $10,000 in annual value, whether in a single contract, multiple contracts, a series of contracts or renewals of contracts, with a single vendor.

§§ 1207.4 through 1207.9 [Reserved].

Subpart B—Minority and Women Inclusion and Diversity at the Federal Housing Finance Agency

§ 1207.10 through 1207.19 [Reserved]

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

§ 1207.20 Office of Minority and Women Inclusion.

(a) *Establishment.* Each regulated entity and the Office of Finance shall establish and maintain an Office of Minority and Women Inclusion, or designate and maintain an office to perform the responsibilities of this part, under the direction of an officer of the regulated entity or the Office of Finance who reports directly to either the Chief Executive Officer or the Chief Operating Officer, or the equivalent. Each regulated entity and the Office of Finance shall notify the Director within thirty (30) days after any change in the designation of the office performing the responsibilities of this part.

(b) *Adequate resources.* Each regulated entity and the Office of Finance will ensure that its Office of Minority and Women Inclusion, or the office designated to perform the responsibilities of this part, is provided human, technological, and financial resources sufficient to fulfill the requirements of this part.

(c) *Responsibilities.* Each Office of Minority and Women Inclusion, or the office designated to perform the responsibilities of this part, is responsible for fulfilling the requirements of this part, 12 U.S.C. 1833e(b) and 4520, and such standards and requirements as the Director may issue hereunder.

§ 1207.21 Equal opportunity in employment and contracting.

(a) *Equal opportunity notice.* Each regulated entity and the Office of Finance shall publish a statement, endorsed by its Chief Executive Officer and approved by its Board of Directors, confirming its commitment to the principles of equal opportunity in employment and in contracting, at a minimum regardless of color, national origin, sex, religion, age, disability status, or genetic information. The notice also shall confirm commitment against retaliation or reprisal. Publication shall include, at a minimum, conspicuous posting in all regulated entity and Office of Finance physical facilities, including through alternative media formats, as necessary, and accessible posting on the regulated entity's and the Office of Finance's Web site. The notice shall be updated and re-published, re-endorsed by the Chief Executive Officer and re-approved by the Board of Directors annually.

(b) *Policies and procedures.* Each regulated entity and the Office of Finance shall develop, implement, and maintain policies and procedures to ensure, to the maximum extent possible in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity and the Office of Finance, including in management, employment, procurement, insurance, and all types of contracts. The policies and procedures of each regulated entity and the Office of Finance at a minimum shall:

(1) Confirm its adherence to the principles of equal opportunity and non-discrimination in employment and in contracting;

(2) Describe its policy against discrimination in employment and contracting;

(3) Establish internal procedures to receive and attempt to resolve complaints of discrimination in employment and in contracting. Publication will include at a minimum making the procedure conspicuously accessible to employees and applicants through print, electronic, or alternative media formats, as necessary, and through the regulated entity's or the Office of Finance's Web site;

(4) Establish an effective procedure for accepting, reviewing and granting or denying requests for reasonable accommodations of disabilities from employees or applicants for employment;

(5) Encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors and engage in recruiting and outreach directed at encouraging individuals who are minorities, women and individuals with disabilities to seek or apply for employment with the regulated entity or the Office of Finance;

(6) Except as limited by § 1207.3(b), require that each contract it enters contains a material clause committing the contractor to practice the principles of equal employment opportunity and non-discrimination in all its business activities and requiring each such contractor to include the clause in each subcontract it enters for services or goods provided to the regulated entity or the Office of Finance;

(7) Identify the types of contracts the regulated entity considers exempt under § 1207.3(b) and any commercially reasonable thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1207.21(c)(2). The policies and procedures must address the rationale and need for implementing the thresholds, exceptions, or limitations;

(8) Be published and accessible to employees, applicants for employment, contractors, potential contractors, and members of the public through print, electronic, or alternative media formats, as necessary, and through the regulated entity's or the Office of Finance's Web site; and

(9) Be reviewed at the direction of the officer immediately responsible for directing the Office of Minority and Women Inclusion, or other office designated to perform the responsibilities of this part, at least annually to assess their effectiveness and to incorporate appropriate changes.

(c) *Outreach for contracting.* Each regulated entity and the Office of Finance shall establish a program for outreach designed to ensure to the maximum extent possible the inclusion in contracting opportunities of minorities, women, individuals with disabilities, and minority-, women-, and

disabled-owned businesses. The program at a minimum shall:

(1) Apply to all contracts entered into by the regulated entity or the Office of Finance, including contracts with financial institutions, investment banking firms, investment consultants or advisors, financial services entities, mortgage banking firms, asset management entities, underwriters, accountants, brokers, brokers-dealers, and providers of legal services;

(2) Establish policies, procedures and standards requiring the publication of contracting opportunities designed to encourage contractors that are minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses to submit offers or bid for the award of such contracts; and

(3) Ensure the consideration of the diversity of a contractor when the regulated entity or the Office of Finance reviews and evaluates offers from contractors.

§ 1207.22 Regulated entity and Office of Finance reports.

(a) *General.* Each regulated entity and the Office of Finance, through its Office of Minority and Women Inclusion, or other office designated to perform the responsibilities of this part, shall report in writing, in such format as the Director may require, to the Director describing its efforts to promote diversity and ensure the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services and the results of such efforts.

(1) Within 180 days after the effective date of this regulation each regulated entity and the Office of Finance shall submit to the Director or his or her designee a preliminary status report describing actions taken, plans for and progress toward implementing the provisions of 12 U.S.C. 4520 and this part; and including to the extent available the data and information required by this part to be included in an annual report.

(2) FHFA intends to use the preliminary status report solely for the purpose of examining the submitting regulated entity or the Office of Finance and reporting to the institution on its operations and the condition of its program.

(b) *FHFA use of reports.* The data and information reported to FHFA under this part (except for the initial report under paragraph (a)(1) of this section) are intended to be used for any permissible supervisory and regulatory purpose, including examinations, enforcement actions, identification of matters requiring attention, and production of FHFA examination, operating and condition reports related to one or more of the regulated entities and the Office of Finance. FHFA may use the information and data submitted to issue aggregate reports and data summaries that each regulated entity and the Office of Finance may use to assess its own progress and accomplishments, or to the public as it deems necessary. FHFA is not requiring, and does not desire, that reports under this part contain personally identifiable information.

(c) *Frequency of reports.* Each regulated entity and the Office of Finance shall submit an annual report on or before March 1 of each year, beginning in 2012, reporting on the period of January 1 through December 31 of the preceding year, and such other reports as the Director may require. If the date for submission falls on a Saturday, Sunday, or Federal holiday, the report is due no later than the next day that is not a Saturday, Sunday, or Federal holiday.

(d) *Annual summary.* Each regulated entity and the Office of Finance shall include in its annual report to the Director (pursuant to 12 U.S.C. 1723a(k), 1456(c), or 1440, with respect to the regulated entities) a summary of its activities under this part during the previous year, including at a minimum, detailed information describing the actions taken by the regulated entity or the Office of Finance pursuant to 12 U.S.C. 4520 and a statement of the total amounts paid by the regulated entity or the Office of Finance to contractors during the previous year and the percentage of such amounts paid to contractors that are minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities and disabled-owned businesses respectively, as limited by § 1207.3(b).

§ 1207.23 Annual reports—format and contents.

(a) *Format.* Each annual report shall consist of a detailed summary of the regulated entity's or the Office of Finance's activities during the reporting year to carry out the requirements of this part, which report may also be made a part of the regulated entity's or the Office of Finance's annual report to the Director. The report shall contain a table of contents and conclude with a certification by the regulated entity's or the Office of Finance's officer responsible for the annual report that the data and information presented in the report are accurate, and are approved for submission.

(b) *Contents.* The annual report shall contain the information provided in the regulated entity's or the Office of Finance's annual summary pursuant to § 1207.22(d) and, in addition to any other information or data the Director may require, shall include:

(1) The EEO–1 Employer Information Report (Form EEO–1 used by the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) to collect certain demographic information) or similar reports filed by the regulated entity or the Office of Finance during the reporting year. If the regulated entity or the Office of Finance does not file Form EEO–1 or similar reports, the regulated entity or the Office of Finance shall submit to FHFA a completed Form EEO–1;

(2) All other reports or plans the regulated entity or the Office of Finance submitted to the EEOC, the Department of Labor, OFCCP or Congress ("reports or plans" is not intended to include separate complaints or charges of discrimination or responses thereto) during the reporting year;

(3) Data showing by minority and gender the number of individuals applying for employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO–1 during the reporting year;

(4) Data showing by minority and gender the number of individuals hired for employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO–1 during the reporting year;

(5) Data showing by minority, gender and disability classification, and categorized as voluntary or involuntary, the number of separations from employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO–1 during the reporting year;

(6) Data showing the number of requests for reasonable accommodation received from employees and applicants for employment, the number of requests granted, and the disabilities accommodated and the types of accommodation granted during the reporting year;

(7) Data showing for the reporting year by minority, gender, and disability classification the number of individuals applying for promotion at the regulated entity or the Office of Finance—

(i) Within each occupational or job category identified on the Form EEO–1; and

(ii) From one such occupational or job category to another;

(8) Data showing by minority, gender, and disability classification the number of individuals—

(i) Promoted at the regulated entity or the Office of Finance within each occupational or job category identified on the Form EEO–1, after applying for such a promotion;

(ii) Promoted at the regulated entity or the Office of Finance within each occupational or job category identified on the Form EEO–1, without applying for such a promotion; and

(iii) Promoted at the regulated entity or the Office of Finance from one occupational or job category identified on the Form EEO–1 to another such category, after applying for such a promotion;

(9) A comparison of the data reported under paragraphs (b)(1) through (b)(8) of this section to such data as reported in the previous year together with a narrative analysis;

(10) Descriptions of all regulated entity or Office of Finance outreach activity during the reporting year to recruit individuals who are minorities, women, or persons with disabilities for employment, to solicit or advertise for minority or minority-owned, women or women-owned, and disabled-owned contractors or contractors who are individuals with disabilities to offer proposals or bids to enter into business with the regulated entity or Office of Finance, or to inform such contractors of the regulated entity's or Office of Finance's contracting process, including the identification of any partners, organizations, or government offices with which the regulated entity or the Office of Finance participated in such outreach activity;

(11) Cumulative data separately showing the number of contracts entered with minorities or minority-owned businesses, women or women-owned businesses and individuals with disabilities or disabled-owned businesses during the reporting year;

(12) Cumulative data separately showing for the reporting year the total amount the regulated entity or the Office of Finance paid to contractors that are minorities or minority-owned businesses, women or women-owned and individuals with disabilities or disabled-owned businesses;

(13) The annual total of amounts paid to contractors and the percentage of which was paid separately to minorities or minority-owned businesses, women or women-owned businesses and individuals with disabilities or disabled-owned businesses during the reporting year;

(14) Certification of compliance with §§ 1207.20 and 1207.21, together with sufficient documentation to verify compliance;

(15) Data for the reporting year showing, separately, the number of equal opportunity complaints (including administrative agency charges or complaints, arbitral or judicial claims) against the regulated entity or the Office of Finance that—

(i) Claim employment discrimination, by basis or kind of the alleged discrimination (race, sex, disability, *etc.*) and by result (settlement, favorable, or unfavorable outcome);

(ii) Claim discrimination in any aspect of the contracting process or administration of contracts, by basis of the alleged discrimination and by result; and

(iii) Were resolved through the regulated entity's or the Office of Finance's internal processes;

(16) Data showing for the reporting year amounts paid to claimants by the regulated entity or the Office of Finance for settlements or judgments on discrimination complaints—

(i) In employment, by basis of the alleged discrimination; and

(ii) In any aspect of the contracting process or in the administration of contracts, by basis of the alleged discrimination;

(17) A comparison of the data reported under paragraphs (b)(12) and (b)(13) of this section with the same information reported for the previous year;

(18) A narrative identification and analysis of the reporting year's activities the regulated entity or the Office of Finance considers successful and unsuccessful in achieving the purpose and policy of regulations in this part and a description of progress made from the previous year; and

(19) A narrative identification and analysis of business activities, levels, and areas in which the regulated entity's or the Office of Finance's efforts need to improve with respect to achieving the purpose and policy of regulations in this part, together with a description of anticipated efforts and results the regulated entity or the Office of Finance expects in the succeeding year.

§ 1207.24 Enforcement.

The Director may enforce this regulation and standards issued under it in any manner and through any means within his or her authority, including through identifying matters requiring attention, corrective action orders, directives, or enforcement actions under 12 U.S.C. 4513b and 4514. The Director may conduct examinations of a regulated entity's or the Office of Finance's activities under and in compliance with this part pursuant to 12 U.S.C. 4517.

Dated: December 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–32541 Filed 12–27–10; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1252

RIN 2590–AA22

Portfolio Holdings

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule; response to comments on the interim final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that will govern the portfolio holdings of Fannie Mae and Freddie Mac (collectively, the Enterprises) during the pendency of the conservatorships. The final regulation adopts FHFA's interim final rule on portfolio holdings, without change. *See* 74 FR 5609, January 30, 2009. That interim rule adopted the portfolio limits specified in each Enterprise's Senior Preferred Stock Purchase Agreement (PSPA) with the Department of the Treasury (Treasury) as the regulation limits. Specifically, it provides that each Enterprise comply with the portfolio limits contained in the respective PSPAs, as they may be amended from time to time. The interim regulation also stipulated that the regulation is to be in effect until amended or the Enterprises are no longer subject to the PSPAs.

DATES: Effective December 28, 2010, the interim final rule published on January 30, 2009 (74 FR 5609), which was effective January 30, 2009, is confirmed as final.

FOR FURTHER INFORMATION CONTACT: Ming-Yuen Meyer-Fong, Office of the General Counsel, (202) 414–3798, or Valerie Smith, Office of Policy Analysis and Research, (202) 414–3770, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339. For more information on this Final Regulation, *see* the

SUPPLEMENTARY INFORMATION section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Housing Finance Agency and Recent Legislation

On July 30, 2008, the Housing and Economic Recovery Act (HERA) (Pub. L. 110–289, 122 Stat. 2564) was signed into law. Among other things, HERA established FHFA as a new independent agency and transferred the supervisory and oversight responsibilities for Fannie Mae and Freddie Mac from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), Public Law 102–550 (codified at 12 U.S.C. 4501 *et seq.*). The Safety and Soundness Act required FHFA to establish criteria, by regulation, governing the portfolio holdings of the Enterprises. 12 U.S.C. 4624. The purpose of such regulation is to ensure that the portfolio holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the Enterprises. 12 U.S.C. 4624(a). In establishing criteria governing the portfolio holdings of the Enterprises, the Safety and Soundness Act directed FHFA to consider the ability of the Enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to standards of prudential management and operations established by FHFA in accordance with section 1313B of the Safety and Soundness Act. 12 U.S.C. 4624. The Safety and Soundness Act further required that any criteria governing Enterprise portfolio holdings ensure that such holdings be consistent with the Enterprises' mission, which includes facilitating the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes. 12 U.S.C. 4624(a); 12 U.S.C. 4501(7).

B. The Enterprises, Generally

Fannie Mae and Freddie Mac are government-sponsored enterprises (GSEs) chartered by Congress for the purposes of establishing secondary market facilities for residential mortgages. 12 U.S.C. 1716 *et seq.* (Fannie Mae Charter Act) and 12 U.S.C. 1451, *et seq.* (Freddie Mac Corporation Act). Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the country. 12 U.S.C. 4624(b).

The Enterprises grew rapidly during the late 1990s into the early 2000's—nearly doubling their combined net holdings of mortgage assets from 1996 to 1999 and more than tripling those net holdings from 1996 to 2002. Accounting and other internal control issues caused the Enterprises to slow the growth of, and in the case of Fannie Mae, shrink, their mortgage asset portfolios after 2003. Because of increased operational risk, OFHEO, predecessor to FHFA, imposed on each Enterprise a 30 percent capital surcharge, and in mid-2006, the Enterprises agreed to cap the growth of their mortgage portfolio holdings due to their accounting, internal control, and risk management weaknesses.

At the end of 2009, the Enterprises had combined assets of just over $1.7 trillion and combined mortgage assets of approximately $1.5 trillion. At that time, the Enterprises guaranteed the credit risk of mortgage loans backing nearly $3.9 trillion of mortgage-backed securities (MBS). In total, Fannie Mae and Freddie Mac owned and guaranteed approximately 46.7 percent of the nation's residential mortgage debt outstanding as of the end of 2009.

C. Establishment of the Conservatorships

The U.S. housing markets began deteriorating in mid-2007, and the deterioration continued throughout 2008. The price volatility and liquidity problems in financial markets that ensued led to sizeable credit and market losses at both Enterprises, depletion of their capital, and an inability of the Enterprises to raise new capital and to access debt markets in their customary way. Significant safety and soundness issues and risk that the Enterprises would be unable to fulfill their missions caused FHFA, with the concurrence of the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve, on September 6, 2008, to place the Enterprises into conservatorship. By board approval, each Enterprise consented to the appointment of a conservator. The goals of FHFA in placing the Enterprises into conservatorship included enhancing the capacity of each Enterprise to fulfill its mission of providing liquidity and stability to the mortgage markets and mitigating the systemic risk which each poses and which had contributed to instability in mortgage and broader financial markets.

Critical to the establishment of the conservatorships were the actions taken at the same time by the Treasury—consistent with its authority granted in HERA—to provide ongoing financial support to the Enterprises to ensure they remain active participants in the marketplace. Upon establishment of conservatorships for the Enterprises, FHFA acting on behalf of each Enterprise entered into separate PSPAs with the Treasury on September 7, 2008. The PSPAs prevent Enterprise capital from being exhausted and are the cornerstone of the financial support that the Treasury is providing to Fannie Mae and Freddie Mac. Under the PSPAs, each Enterprise's business operations was fortified through an initial commitment by the Treasury to acquire up to $100 billion of senior preferred stock in each Enterprise as necessary to ensure that the Enterprise avoids a negative net worth, determined in accordance with generally accepted accounting principles.

In return for the support provided through the PSPAs, Fannie Mae and Freddie Mac provided certain compensation to the Treasury and accepted various restrictions. The compensation to the Treasury initially included the issuance by each Enterprise of $1 billion in senior preferred stock and warrants for the purchase of common stock representing 79.9 percent of its outstanding common stock. In addition, the Enterprises agreed to limitations on their business activities. In particular, while the PSPAs do not restrict how each Enterprise can increase its net MBS outstanding (MBS held by others), they initially limited the growth of each Enterprise's mortgage asset portfolio to a maximum balance of $850 billion at the end of 2009. Thereafter, the PSPAs stipulated that the mortgage asset portfolios must shrink by at least 10 percent per year until each Enterprise's holdings of mortgage assets reached a balance of $250 billion, at which point, no further reduction would be required by the PSPA.

The PSPAs were amended in September 2008 and in May 2009. The latter amendment, among other things, doubled Treasury's funding commitment to each Enterprise to $200 billion from $100 billion, and increased the size of each Enterprise's mortgage asset portfolio allowed under the PSPAs by $50 billion to $900 billion. The revised and amended PSPAs left unchanged the requirement that after December 31, 2009, the portfolio holdings of each Enterprise be reduced by at least 10 percent per year from the amount of mortgage assets held at the

close of the preceding year until each Enterprise's portfolio holdings of mortgage assets reached a size of $250 billion.

To further solidify Treasury support for the Enterprises and the role they continue to play in the housing and mortgage markets during the current crisis, the Treasury and FHFA, on December 24, 2009, again amended the PSPAs.[1] That amendment let stand the maximum allowable amount of mortgage assets each Enterprise could own on December 31, 2009—$900 billion. However, the covenant requiring the Enterprises to reduce their mortgage assets was revised such that it is based on the maximum amount that they were permitted to own as of December 31 of the immediately preceding calendar year, rather than the amounts they actually owned at that time. As revised, beginning on December 31, 2010 and each year thereafter, each Enterprise is required to reduce its mortgage assets to at most 90 percent of the maximum allowable amount each was permitted to own as of December 31 of the immediately preceding calendar year, until the amount of their respective mortgage assets reaches $250 billion, at which point, no further reduction is required by the PSPA. As noted in FHFA's February 2, 2010 letter to the leaders of the Senate Banking Committee and the House Financial Services Committee on the status and future of the conservatorship, the amendment to the portfolio limits provides the Enterprises with flexibility to purchase delinquent loans out of guaranteed mortgage-backed securities pools as necessary.

Since the establishment of the conservatorships, the combined losses at the two Enterprises depleted all of their capital and required them to draw $150.8 billion of senior preferred stock pursuant to the PSPAs through September 2010. By providing a capital backstop to the Enterprises, the Treasury's commitment under the PSPAs effectively eliminated any mandatory triggering of receivership and ensures that the Enterprises have the ability to fulfill their financial obligations and perform their statutory mission without increasing their systemic risk.

D. Interim Final Rule

On January 30, 2009, FHFA published in the **Federal Register** an interim final regulation which added new subchapter C of part 1252 to 12 CFR Chapter XII. *See* 74 FR 5609. The interim final regulation adopted, by reference, the portfolio holdings criteria established in the PSPAs, as may be amended from time to time. The establishment of criteria governing Enterprise portfolio holdings in the PSPAs in the interim final rule represented an exercise of authority consistent with the authority granted by Congress under section 1369E of the Safety and Soundness Act. FHFA's goals for the conservatorship include fortifying the capacity of the Enterprises to support the secondary mortgage market. The initial criteria for Enterprise portfolio holdings established in the PSPAs provided the Enterprises with some immediate capacity to provide stability and liquidity to the secondary mortgage market, while mitigating systemic risk, and facilitating Enterprise efforts to achieve a balance between their mission and safe and sound operations in the intermediate term. The February PSPA amendments provided some additional capacity to address market conditions. The December PSPA amendments provided additional flexibility to allow for the purchase of delinquent mortgages. Despite having some additional capacity to grow their retained portfolios since the establishment of the conservatorships, the primary source of Enterprise retained portfolio purchases has been delinquent mortgages. The Enterprises remain on track to be below the $810 billion retained portfolio limit as of December 31, 2010. The retained portfolio reduction provided for in the PSPAs avoids the need for potentially destabilizing liquidation in the near term, while ensuring that in the future the potential for systemic risk associated with these portfolios is reduced.

The interim final regulation also solicited comments on the overall interim final rule and to a series of questions that relate to portfolio holdings when the Enterprises are no longer subject to their respective PSPAs. Specifically, the interim final rule raised a number of general questions related to the benefits of the Enterprises' purchases and holdings of mortgage assets and the risks, including systemic risk, posed by the mortgage asset holdings, and the mission-related need for the portfolios. The interim final rule also posed specific questions related to the size, composition, and funding of the Enterprises' mortgage asset portfolios.

Finally, the interim final rule solicited comments on a series of general questions related to the Enterprises' holding of non-mortgage assets as well as specific questions on the size and composition of the non-mortgage assets portfolios. While the portfolio holdings criteria set forth in the PSPAs do not address Enterprise holdings of non-mortgage assets, FHFA noted in the interim final regulation the need for the Enterprises to maintain adequate levels of liquidity in order to carry out their day-to-day operating activities. Adequate levels of liquidity strengthen the Enterprises' ability to meet their statutory mission of providing stability and liquidity to the secondary mortgage market, during good times and during periods of market stress, without incurring extraordinary financing costs.

The comment period for the interim final rule closed on June 1, 2009; eight (8) comment letters were received. Those letters are available at the FHFA Web site, *http://www.fhfa.gov/Default.aspx?Page=89&ListNumber=5&ListID=278&ListYear=2009&SortBy=#278*.

II. Discussion of Comments

FHFA requested comments on all aspects of the interim final rule as well as comments on the issues and questions set forth in the preamble concerning criteria governing Enterprise portfolio holdings that will apply when the Enterprises are no longer subject to the PSPAs. In response to that request, FHFA received eight (8) comment letters. Commenters represented trade and special interest groups of various sectors of the housing and mortgage markets. There were no comments from researchers, policymakers, lawmakers, or Enterprise competitors or counterparties.

Two comments included discussion of the interim final regulation. The majority (five) of the public comments included responses to the questions posed regarding Enterprise portfolio holdings when the Enterprises are no longer subject to the PSPAs. Only two (2) commenters touched on Enterprise portfolio holdings while the Enterprises are in conservatorship. One commenter suggested strategies for reengineering the nation's mortgage finance system. In general, commenters were silent on

[1] Besides amending the provisions relating to the Enterprises' portfolios, the Second Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement (Second Amendment to PSPA) also increased the Treasury's funding commitment to each Enterprise. Specifically, the definition of "maximum amount" was amended to mean "as of any date of determination, the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012, and in the case of either (a) or (b), less the aggregate amount of funding under the Commitment prior to such date." Second Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement (Terms and Conditions, para. 3).

questions regarding the Enterprises' non-mortgage portfolio holdings.

While FHFA considered all comments received, it is important to note that the final rule is based on the fact that the Enterprises are in conservatorship, and that the question of their future status has not yet been resolved.

A. Comments Relating to the Questions Posed in the Interim Final Rulemaking

Several commenters argued that the mortgage asset portfolios of Fannie Mae and Freddie Mac were beneficial because of the limited or lack of access to secondary markets for certain mortgage products. One commenter noted in particular, the absence of a secondary mortgage market for Home Equity Conversion Mortgages and argued that holding those mortgages in portfolio is the only way of providing liquidity to that segment of the mortgage market.

Commenters also responded to FHFA's question concerning the ability of the Enterprises to fulfill their mission without the mortgage portfolios. One commenter stated that the Enterprises, through the 1990s, had fulfilled their mission without portfolios. Some others, however, thought that some portfolio capacity is necessary to provide price stability and liquidity during periods of market stress. A number of commenters expressed concern about the implication of shrinking the portfolios on, for instance, multifamily and some non-standard loans.

Several commenters argued that the Enterprises' purchase of mortgage assets should vary over the credit cycle or conditions in the secondary markets. One commenter suggested that the portfolios should be viewed as a "safety valve" for providing liquidity when secondary market conditions are adverse or mortgage credit conditions drive away other lending sources.

Relative to the question about the type of mortgage assets the Enterprises should be allowed to hold, one commenter saw little rationale for allowing the Enterprises to hold their own, Ginnie Mae, or private-label mortgage-backed securities (MBS), except during periods of market illiquidity. That commenter suggested that the portfolios should generally be used only to meet mission goals that cannot be met though securitization.

With respect to the question concerning the use of portfolio holdings criteria and the capital regulations and other supervisory tools to address the Enterprises' exposure to additional risk posed by their holdings, one commenter suggested that FHFA establish risk-based capital requirements to cover all portfolio activities. Another commenter suggested that the Enterprises' capital requirements be calibrated in such a manner as to provide incentives for the Enterprises to minimize their portfolio holdings. Still another commenter urged that the Enterprises be held to similar portfolio capitalization standards as commercial banks, noting also that loans held, which have interest rate and credit risk, should be differentiated from loans sold as MBS, which primarily have credit risk for the Enterprises.

Given that the future status of the Enterprises is not yet resolved, FHFA has determined that it is premature to establish criteria or to address the substantive questions raised in the supplementary information to the interim final rule at this stage. There is currently no resolution as to the necessary reforms for the housing finance system or to the question of what form the Enterprises will take if or when they emerge from conservatorship. These issues affect the appropriate regulatory framework. Given these fundamental unresolved issues, the final rule adopts the portfolio limits set forth in the PSPAs. FHFA may revisit the rule when circumstances warrant.

B. Comments Relating to the Interim Final Rule

The commenters raised several issues relating to the interim final rule. In one instance, a commenter suggested incorporating the Treasury portfolio limits by restating them in the rule itself, rather than reference the PSPAs. The commenter expressed concern over not knowing how long the PSPAs would remain in effect and over the lack of public notice and comment when the PSPAs are modified or terminated. The commenter noted that the May 2009 amendment to the PSPAs increasing the portfolio limits to $900 billion for each Enterprise was accomplished without notice and comment. Accordingly, the commenter suggested specifying the portfolio limits in the regulation, which would provide an opportunity for public notice and comment when modifications are made to those portfolio limits, and would ensure that limits remain in place should the PSPAs terminate.

FHFA determined that the proposed change is not necessary or prudent at this time. Section 1369E of the Safety and Soundness Act, as amended by section 1109 of HERA, provides for regulatory portfolio criteria governing the Enterprises as self-sustaining, privately managed and owned companies, and does not specifically address an Enterprise's portfolio holdings when the Enterprise is in conservatorship. Currently, both Enterprises are in conservatorship and require regular Treasury capital infusions under the PSPAs to remain solvent.

The circumstances of the portfolio regulation are such that it is not reasonable to interpret the Safety and Soundness Act's portfolio provision as requiring notice-and-comment rulemaking in order to change the portfolio limits when the Enterprises are in conservatorship and supported by Treasury infusions of capital. The principal concerns of the statute are safety and soundness, capital adequacy, and limiting systemic risk posed by the Enterprises' retained portfolios. Those concerns are addressed in conservatorship through the vehicles of the PSPAs and FHFA's on-going oversight of the Enterprises' risk management practices. Under the PSPAs, the Treasury provides capital, while enumerated significant business decisions require Treasury approval. While the Enterprises are operating under conservatorship, FHFA maintains continual oversight of the risk management practices associated with the Enterprises' retained portfolios, even more directly than it does in its capacity as regulator. In terms of systemic risk, the PSPAs prescribe an orderly reduction in the portfolios, reducing risk to the Enterprises while at the same time providing market stability by not requiring a too-rapid sell-off of portfolio assets. In addition, allowing room within the portfolio limits for repurchases of delinquent mortgages from outstanding MBS is necessary for loan modifications, which also contribute to overall market stability. Balancing these competing needs in a time of market stress such as the present requires greater flexibility in portfolio management than notice-and-comment rulemaking permits, and therefore in these circumstances, when the Enterprises are in conservatorship, we do not interpret the statute as requiring it. Accordingly, the final regulation retains the language from the interim final regulation.

Another commenter suggested that, pursuant to HERA, FHFA establish a formal process of reviewing the Enterprises' portfolio holdings and a mechanism for adjusting the portfolio limits based on such reviews. Such a process would allow formal periodic adjustment of the portfolio parameters in response to conditions in the market. Related to the process of adjusting the portfolio parameters, a third commenter expressed concern over the 10 percent

reduction in the Enterprise portfolios after December 31, 2009. This commenter asks for greater flexibility during times of crisis. FHFA monitors the Enterprises' portfolios through supervisory and conservatorship channels. If market conditions dictate a need to consider the portfolio reduction provisions in the PSPAs, FHFA will take the appropriate actions to seek amendments to the PSPAs. FHFA thus concludes no change to the interim final rule in this regard is necessary at this time.

III. Final Rule

FHFA adopts the portfolio holdings criteria established by the PSPAs, as may be amended from time to time, as the standard governing the holding of mortgage assets by the Enterprises. Under the PSPAs, which currently have the same portfolio holdings criteria for both Enterprises, beginning on December 31, 2010, and each year thereafter, each Enterprise is required to reduce its mortgage assets to 90 percent of the maximum allowable amount it was permitted to hold as of December 31 of the immediately preceding calendar year, until the maximum amount of the mortgage assets owned by each Enterprise reaches $250 billion. Thus, the maximum allowable amount of mortgage assets that each Enterprise may own as of December 31, 2010, is $810 billion.

This regulation will remain in effect until amended or the Enterprises are no longer subject to the PSPAs. Amendments to the portfolio limits and criteria on the limits can be made by amendment of the PSPAs. Under the final regulation, the Enterprises are to comply with the PSPA portfolio limits as amended from time to time.

While the final regulatory criteria incorporate the PSPAs' portfolio limits as agreed upon by the Treasury and FHFA as conservator, the Safety and Soundness Act provides that the Director monitor the portfolio of each Enterprise and authorizes the Director to order an Enterprise to dispose of or acquire any asset under terms and conditions to be determined by the Director, if the Director determines that such action is consistent with the purposes of the Safety and Soundness Act or the authorizing statute of the Enterprise. 12 U.S.C. 4624(c).

IV. Section by Section Analysis

Section 1252.1

Section 1252.1 adopts the portfolio holdings criteria established by the PSPAs, as they may be amended from time to time, as the standard for this rule.

Under the current PSPAs, which have the same portfolio holdings criteria for both Enterprises, an Enterprise may hold mortgage assets up to $900 billion as of December 31, 2009. Starting on December 31, 2010, the Enterprise portfolio limits will decrease annually by 10 percent from the maximum limit in the preceding year until the limit reaches a level of $250 billion, at which point, no further decrease is currently required. Adjustments could be made to those criteria by amendment of the PSPAs.

Compliance with the PSPAs is necessary to ensure that each Enterprise receives adequate capital to support its ongoing business operations. FHFA's goals for the conservatorship include strengthening Enterprise capacity to support the secondary mortgage market. The criteria for Enterprise portfolio holdings established in the PSPAs provided the Enterprises capacity to provide stability and liquidity to the secondary mortgage market (including the purchase of delinquent mortgages), while mitigating systemic risk, and facilitating Enterprise efforts to achieve a balance between their mission and safe and sound operations in the intermediate term. The retained portfolio reduction provided for in the PSPAs avoids the need for potentially destabilizing liquidation in the near term, while ensuring that in the future the potential for systemic risk associated with these portfolios is reduced.

FHFA's establishment of PSPA portfolio criteria as its regulatory criteria represents an exercise of authority consistent with the authority granted by Congress under section 1369E of the Safety and Soundness Act.

Section 1252.2

Section 1252.2 addresses the effective duration of the interim rule. FHFA expects these regulations to be effective until any amendment or until the Enterprises are no longer subject to the terms and obligations of the PSPAs.

V. Paperwork Reduction Act

The regulation does not contain any collections of information pursuant to the Paperwork reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

VI. Regulatory Flexibility Act

The regulation applies only to the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), FHFA, hereby, certifies that the regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1252

Government-sponsored enterprises, Mortgages, Portfolio holdings.

PART 1252—PORTFOLIO HOLDINGS

Authority and Issuance

■ Therefore, the Federal Housing Finance Agency hereby adopts the interim final rule, published at 74 FR 5609 (January 30, 2009) as final without change.

Dated: December 17, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–32531 Filed 12–27–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0437; Directorate Identifier 2009–NM–130–AD; Amendment 39–16539; AD 2010–25–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 737–200, –300, –400, and –500 series airplanes. This AD requires repetitive inspections for cracking of certain fuselage frames and stub beams, and corrective actions if necessary. This AD also provides for an optional repair, which would terminate the repetitive inspections. For airplanes on which a certain repair is done, this AD also requires repetitive inspections for cracking of certain fuselage frames and stub beams, and corrective actions if necessary. This AD results from reports of the detection of fatigue cracks at certain frame sections, in addition to stub beam cracking, caused by high flight cycle stresses from both pressurization and maneuver loads. We are issuing this AD to detect and correct fatigue cracking of certain fuselage frames and stub beams and possible

severed frames, which could result in reduced structural integrity of the frames. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and could result in rapid decompression of the fuselage.

DATES: This AD is effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 737–200, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on May 7, 2010 (75 FR 25124). That NPRM proposed to require repetitive inspections for cracking of certain fuselage frames and stub beams, and corrective actions if necessary. That NPRM also proposed an optional repair, which would terminate the repetitive inspections. For airplanes on which a certain repair is done, that NPRM also proposed to require repetitive inspections for cracking of certain fuselage frames and stub beams, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change Paragraph (i)

Boeing asked that paragraph (i) of the NPRM be changed to include a high frequency eddy current (HFEC) inspection. Boeing stated that Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, provides two options for inspections: detailed and HFEC. Boeing added that for areas where the repair hinders the inspection, both detailed and HFEC inspection options were provided, depending on which option was chosen for the original inspection.

We agree with the commenter for the reasons provided. We have changed paragraph (i) of this AD to include an option for the HFEC inspection.

Request To Change Compliance Time

Boeing also asked that the compliance time specified in paragraph (g)(3) of the NPRM be changed to "the sooner of (i) within 4,500 flight cycles after the effective date of the AD or (ii) within 9,000 flight cycles after the previous inspection done in accordance with Boeing Alert Service Bulletin 737–53A1254, dated February 17, 2005." Boeing stated that new data indicate that the repeat interval for the area below the floor should be changed to 9,000 flight cycles from 4,500 flight cycles. Boeing added that for airplanes on which the inspection in the original issue of Boeing Alert Service Bulletin 737–53A1254 has been done, the compliance time as written in Boeing Alert Service Bulletin 737–53A1254, Revision 1 (*i.e.,* 3,000 flight cycles from release of Revision 1 or 4,500 flight cycles from previous inspection, whichever is sooner), could cause a significant impact by putting some airplanes out of compliance. Boeing noted that the NPRM could potentially allow a longer compliance time than that in the original issue of the service bulletin. Boeing recommends that paragraph (g)(3) be changed as specified previously.

We acknowledge the commenter's concern and provide the following. The compliance times required by paragraph (g) are at the "later of," not the "sooner of," the compliance times specified in paragraphs (g)(3)(i) and (g)(3)(ii). We agree that the compliance times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD are somewhat confusing and can be clarified. Therefore, we have combined paragraphs (g)(3)(i) and (g)(3)(ii) with paragraph (g)(3) to provide that clarification.

Request To Change Initial Inspection Threshold

Southwest Airlines asked that the initial inspection threshold required by paragraphs (g)(1) and (g)(2) of the NPRM be changed. Southwest stated that the specified threshold will pose a significant burden on its airline to complete the inspections within the required timeframe. Southwest projected that half of its Model 737–300 and –500 fleet will require an out-of-sequence maintenance visit to support this inspection threshold. Southwest added that this is based on its current substantial maintenance schedule, fleet utilization, and the proposed compliance thresholds based on each airplane's total flight cycles.

We do not agree with the commenter's request. No supporting data were submitted proposing alternative inspection thresholds to maintain an adequate level of safety for its fleet. However, under the provisions of paragraph (m) of this AD, we will consider requests for approval of an alternative inspection threshold if sufficient data are submitted to substantiate that changing the initial inspection threshold would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 635 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
BS 616 and BS 639 inspection/lower frame and stub beam.	15	$85	$1,275 per inspection cycle	635	$809,625 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–25–06 The Boeing Company: Amendment 39–16539. Docket No. FAA–2010–0437; Directorate Identifier 2009–NM–130–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–200, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from the detection of fatigue cracks at certain frame sections, in addition to stub beam cracking, caused by high flight cycle stresses from both pressurization and maneuver loads. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking of certain fuselage frames and stub beams and possible severed frames, which could result in reduced structural integrity of the frames. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and could result in rapid decompression of the fuselage.

Compliance

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

Repetitive Inspections and Corrective Actions

(g) At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do a detailed or high frequency eddy current (HFEC) inspection for cracking of body station (BS) 616 and BS 639 frame webs, inner chord, and outer chord, and the stub beams; and do all applicable related investigative and corrective actions; by accomplishing all the actions specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, except as specified in paragraphs (i) and (j) of this AD. Do all applicable related investigative and corrective actions before further flight. Thereafter, repeat the inspection at intervals not to exceed 4,500 flight cycles since accomplishing the detailed inspection or at intervals not to exceed 9,000 flight cycles since accomplishing the HFEC inspection, as applicable.

(1) For airplanes on which no inspection of the BS 616 and BS 639 frames specified in Boeing Alert Service Bulletin 737–53A1254, dated February 17, 2005, has been done as of the effective date of this AD, and that have accumulated fewer than 55,000 total flight cycles as of the effective date of this AD: Inspect within 3,000 flight cycles after the effective date of this AD, or before the accumulation of 56,500 total flight cycles, whichever occurs first.

(2) For airplanes on which no inspection of the BS 616 and BS 639 frames specified in Boeing Alert Service Bulletin 737–53A1254, dated February 17, 2005, has been done as of the effective date of this AD, and that have accumulated 55,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,500 flight cycles after the effective date of this AD.

(3) For airplanes on which a detailed or HFEC inspection of the BS 616 and BS 639 frames, specified in Boeing Alert Service Bulletin 737–53A1254, dated February 17, 2005, has been done as of the effective date of this AD: Inspect within 4,500 flight cycles after the previous inspection done in accordance with Boeing Alert Service Bulletin 737–53A1254, dated February 17, 2005, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

Post-Repair Repetitive Inspections and Corrective Actions

(h) For airplanes on which the repair specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, has been done: At the applicable time specified in paragraphs (h)(1) and (h)(2) of this AD, do a detailed or HFEC inspection for

cracking of the replacement frame section (frame webs, inner chord, and outer chord); and do all applicable related investigative and corrective actions; by accomplishing all the actions specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, except as specified in paragraphs (i) and (j) of this AD. Do all applicable related investigative and corrective actions before further flight. Thereafter, repeat the inspection at intervals not to exceed 4,500 flight cycles since accomplishing the detailed inspection or at intervals not to exceed 9,000 flight cycles since accomplishing the HFEC inspection, as applicable.

(1) For airplanes on which a partial frame splice repair at BS 616 or BS 639 has been done, and the inner chord and web have been cold-worked: Inspect within 44,000 flight cycles after the repair has been done.

(2) For airplanes on which a partial frame splice repair at BS 616 or BS 639 has been done, and the inner chord and web have not been cold-worked: Inspect within 29,000 flight cycles after that repair has been done.

Alternative Inspection of Repaired or Modified Area

(i) For airplanes on which a repair or preventative modification exists on the inner chord below the floor which prevents the accomplishment of the detailed or HFEC inspection in that area as required by paragraph (g) of this AD: In lieu of inspecting that area, do a detailed or HFEC inspection of the inner chord along the length of the repair and around the fastener heads in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009.

Exceptions to Service Information

(j) Where Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, specifies to contact Boeing for repair instructions and repair: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(k) Although Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, specifies to submit information to the manufacturer, this AD does not include that requirement.

Terminating Action

(l) Doing the repair specified in Part 4 of Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, terminates the repetitive inspection requirements of paragraph (g) of this AD for the repaired frame only.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 737–53A1254, Revision 1, dated July 9, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington on December 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32354 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0913; Directorate Identifier 2009–NM–101–AD; Amendment 39–16545; AD 2010–26–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD requires inspections for scribe lines in the fuselage skin at lap joints, the splice strap at certain butt joints, the skin or doubler at certain approved repair doublers, and the skin at decal locations; and related investigative and corrective actions if necessary. This AD results from reports of scribe line damage found adjacent to the skin lap joints, decals, and wing-to-body fairings. We are issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin. Undetected fatigue cracks can grow and cause sudden decompression of the airplane.

DATES: This AD is effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on October 19, 2009 (74 FR 53442). That NPRM proposed to require inspections for scribe lines in the fuselage skin at lap joints, the splice strap at certain butt joints, the skin or doubler at certain approved repair doublers, and the skin at decal locations; and related investigative and corrective actions, if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the commenters.

Support for the NPRM

The National Safety Transportation Board (NTSB) and Air Transport Association (ATA), on behalf of its member AirTran, support the intent of the NPRM.

Request To Refer to Latest Revision of Service Bulletin

The Boeing Company requests that we revise the NPRM to refer to the latest version of the appropriate service information, Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009.

We agree to refer to the latest version of the service information. Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, shows changes of airplane operators in Paragraph 1.A., Effectivity, and clarifies requirements for inspections of areas of the fuselage having decals. Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, does not require additional work beyond the original version of that service bulletin, which was cited as the appropriate source of service information in the NPRM. We have revised the AD requirements to refer to Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, as the appropriate source of service information, and we have added paragraph (h) to this final rule to provide credit for actions performed in accordance with Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009.

Request To Update Exception in Note 1 of the NPRM

The Boeing Company requests that we revise the NPRM to update the exception referenced in Note 1 of the NPRM because Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, adds an exception to the inspections. The additional exception is described in subparagraph 1.f. in paragraph 1.E., "Compliance," of that service bulletin. Southwest Airlines also requests that we add the same provision. Southwest notes that the additional provision states, "If the operator's records show that decal installation and removal procedures were used, at all times since delivery, which included pre-cutting decals prior to installation on the airplane and no use of metallic tooling of any kind during the installation or removal of decals on the airplane, then the [decal] inspections [per Tables 5 through 9] are not required."

We agree. The specified decal installation and removal procedures have been shown to not result in scribe damage to the fuselage. We have updated Note 1 in this AD to include the additional exception specified in subparagraph 1.f. in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009.

Request To Include Training About Scribe Lines and Scratches

The National Transportation Safety Board (NTSB) is concerned that the NPRM does not address the underlying condition that mechanics and technicians do not have the knowledge, training, and awareness to recognize that minor damage to pressurized airplane skin can result in fatigue cracking, which can result in depressurization events. The NTSB requests that the FAA reexamine existing maintenance practices and training techniques to educate personnel about the serious consequences of minor scratches and scribe lines on pressurized fuselage skin panels.

We acknowledge the NTSB's concerns. However, such training is outside the scope of the AD requirements as defined in 14 CFR part 39. (Part 12 provides inspection procedures for scribe marks found before the initial inspection.) We have worked with industry groups and manufacturers to increase awareness of scribe lines and their effects on skin panels. This topic has also been addressed at Industry Steering Committee (ISC), Maintenance Steering Group (MSG), and Structures Task Group (STG) meetings. We have not changed the AD in regard to this issue.

Request To Remove Hard Time Date

Continental Airlines (Continental) requests that we review the hard time date of July 1, 2007, that is stated in "Compliance," paragraph 1.E.1(a) through 1.E.1(e) of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009. Continental states that a hard time date should not matter if the operator can provide documents that show sealant and decals were removed using an approved method after the operator received the airplane.

We have reviewed the hard time date, as requested by the commenter. The date of July 1, 2007, was selected because all the Boeing documentation was revised as of this date to detail the proper method for removing paint, sealant, and decals. Not all operators may have used methods equivalent to the methods stated in this documentation, but they may have used methods detailed in documentation published before this date. As a result, the date of July 1, 2007, is included appropriately in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009. Operators may submit a request for approval of an alternative method of compliance (AMOC) if their methods for removing paint, sealant, and decals were implemented before July 1, 2007, and provide an acceptable level of safety. We have not changed the AD in regard to this issue.

Request To Incorporate Instructions into Structural Repair Manual (SRM)

Continental requests that the instructions given in Part 12 of the work instructions of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, be incorporated into the structural repair manual (SRM) before the release of the AD because the SRM is for non-routine or non-scheduled events. (Part 12 provides inspection procedures for scribe marks found before the initial inspection.) Continental states that the current instructions make it difficult to comply with the NPRM by the operators' mechanics because they would use the SRM only for repair to damages that are discovered or that occurred during a non-routine event.

We disagree with the request. Significant effort has been made to educate operators about the effects of scribe lines on the fuselage structure. Therefore, all mechanics should be aware of scribe lines. Also, the service bulletins pertaining to scribe lines for all Boeing models contain instructions for repairing scribe line damage found before the inspection threshold. We have not changed the AD in regard to this issue.

Request To Allow All Repairs Using the SRM

Continental requests that we revise the NPRM to allow all repairs using the SRM. Continental states that it does not agree that all repairs need to be approved by Boeing or the FAA Seattle Aircraft Certification Office, as specified in Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, and in paragraphs (i) and (k) of the NPRM. Continental proposes that we add an exception to Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, to allow all repairs other than repairs done for the Limited Return to Service (LTRS) program to be accomplished in accordance with the SRM or to be FAA-approved.

Continental states because the scribe lines do not result from a design deficiency, no differences exist between these repairs and any other repairs on the airplanes. Continental states that if such an exception is not allowed, operators are unfairly penalized by being forced to use Boeing's repair services. While Continental acknowledges that paragraph (k)(2) of the NPRM (now paragraph (p)(2) of the final rule) allows requests for AMOC approvals, it states that the FAA's response time to approve AMOCs does not allow airplanes to return to service in a timely manner that supports operational requirements. Continental states that this is why the designee program exists as given in section 183.29 of the Federal Aviation Regulations (14 CFR 183.29) and FAA Order 8100.15, which should not be overridden by the proposed AD.

We agree to revise the final rule to add an exception to the accomplishment instructions specified by Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009. We agree that repairs to the fuselage where the scribe line is removed are not different from other repairs to the airplane. Also, Boeing has revised the Allowable Damage section of the SRM to address scribe line damage. We have added a new paragraph (k) to the final rule to allow for repair in accordance with an FAA-approved method. We have also added Note 2 to the final rule that provides guidance for repairing scribe damage.

Request To Correct "Relevant Service Information" in NPRM

Continental requests that we correct the "Relevant Service Information" section in the NPRM because Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, does not specify final repairs by using the SRM. Instead, Continental states that Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, specifies to contact Boeing for final repairs.

We agree. However, this section does not appear in this final rule. We have not changed the AD in regard to this issue.

Request To Revise Exceptions for Airplanes That Have Been Scuff Sanded

Air Transport Association (ATA), on behalf of its member American Airlines (American), states that the list of exceptions in section 1.E, "Compliance," of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, should be revised to specify that airplanes that have been scuff sanded and repainted do not require inspections in areas where they have been repainted. American states that it does not use complete paint on the external surfaces and leaves most of the fuselage in natural metal finish. American states that it rarely accomplishes a chemical strip of the painted stripes and that the sealant can be damaged by chemical strippers. This process does not require removal and reapplication, which might cause scribe marks.

We partially agree. The operator's unique finish on the fuselage limits the potential for the development of scribe lines. However, we do not agree that changing this AD is necessary because operators may interpret such an exception to allow sanding after paint and sealant are removed, and these methods might eliminate any evidence of scribe marks. Operators may submit requests for approval of an AMOC for their particular finish configuration. We have not changed the AD in regard to this issue.

Request To Revise Costs of Compliance

ATA, on behalf of its members Air Tran Airlines (Air Tran) and American, requests that we revise the costs of compliance. AirTran states that complying with the NPRM would cost $2,500 per airplane and that it would have to procure special tooling for each site performing the inspection. American Airlines states that complying with the NPRM without any changes would cost it $1,004,080 for labor and $3,458,455 for additional out-of-service time.

We have revised the costs of compliance to increase the labor rate from $80 to $85. However, we have not changed the costs of compliance otherwise. The cost information below describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate.

Request To Require Reporting of Only Positive Findings of Cracks

Southwest Airlines (Southwest) and Qantas request that we revise the AD to require reporting of only crack findings. Southwest notes that AD 2006–07–12, Amendment 39–14539 (71 FR 16211, March 31, 2006), a similar AD that requires inspection for scribe lines on Model 737 airplanes, requires the reporting of cracks found only during LRTS inspections, not scribe lines found as a result of the initial scribe inspections. Qantas asks why a report for a one-time inspection is required.

We agree to provide clarification of the rationale for reporting requirements and to revise the reporting requirements. The data will be used to determine if the existing inspection thresholds and the repeat inspection intervals provided in the LRTS program may be increased, which may result in less work for operators in the future. We have revised paragraph (o) of this final rule to require reporting only positive findings of cracks found during any inspections required by this AD.

Request To Add Instructions for Addressing Scribe Lines Outside Zones

Southwest requests that we revise the AD to either state how to address scribe lines found in zones outside of those zones specified in Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, or add a statement that "no

zone" scribes do not require repetitive inspections or terminating actions. Southwest did not provide justification for its request.

We disagree that revising the NPRM is necessary. This AD requires inspections and a terminating action in only the zones identified in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009. Any zone that is not identified in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, is not subject to inspection or repair requirements of this rule. (See paragraph 3.A. Note 13 of Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009.) We have not changed the AD in regard to this issue.

Request To Address Scribe Lines Less than 0.001 Inch Deep

Southwest requests that we revise the AD to address scribe lines that are less than 0.001 inch deep. Southwest states that Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, states that no further inspections are required for such scribe lines, but Southwest requests that the AD specifically state that such lines do not require terminating action. Southwest asks why the compliance time is "before further flight" if no inspections are required. Southwest asks if that means no additional NDT inspections are required at the time of finding such lines.

We partially agree with the commenter's request. The compliance table in paragraph 1.E., "Compliance," of the service bulletin requires clarification as it shows the compliance time of "before further flight" for inspecting scribe lines that are less than 0.001 inch deep. We have clarified this issue by stating in paragraph (m) of this AD that no further inspections are required provided that correct sealant removal procedures are used.

Request To Allow the Blending of Scribe Lines

Southwest requests that we revise the AD to allow operators to blend scribe lines in accordance with the SRM by treating the scribe line as a gouge or scratch. Southwest states that the 737–700 SRM does not address scribe lines in the Allowable Damage section. Southwest states that Boeing Service Bulletin 737–53A1262 (the appropriate source of service information for a one-time inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas in AD 2006–07–12, Amendment 39–14539 (71 FR 16211, March 31, 2006)) allows the blending of scribe lines in accordance with the SRM by treating the scribe line as a gouge or scratch. However, Southwest notes, Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, does not allow for the same treatment, but recommends that operators contact Boeing for repair instructions.

We agree. All Boeing Model 737 SRMs were revised as a result of the scribe issue to address scribe damage in butt joints and within 1.0 inch of lap splice lower edges and external repair edges. This information is found in the Allowable Damage sections of the SRMs. We have added Note 2 to this final rule, as noted previously.

Request To Include Terminating Action for Repairing Scribe Lines

Southwest requests that accomplishing repairs or modifications in accordance with Boeing Service Bulletin 737–53–1232 be an approved method for terminating scribe line inspections. Southwest did not provide any justification for its request.

We disagree. The repair and modification specified in Boeing Service Bulletin 737–53–1232 are specifically designed for chem mill step cracking, not scribe lines. The modification specified in Boeing Service Bulletin 737–53–1232 would not meet the requirements of this AD. The modification provided in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, does not extend a minimum of three fastener rows below any scribe line damage at a lap joint, and the doubler and tripler used on the repair specified in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, do not extend a minimum of three fastener rows below any scribe damage at a lap joint. We have not changed the AD in regard to this issue.

Request To Include an Exception for Inspections of Areas Covered by Certain Repairs

Southwest requests that we revise the NPRM to contain a provision excluding inspections of areas that are covered by repairs that span a minimum of three rows above and below the inspection area.

We agree with the commenter. This exception is provided in other scribe line ADs for other Boeing airplane models and should apply in this AD as well. We have added paragraph (l) to this AD to provide this exception to Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009. In addition, we have also added an exception to not require removal of a repair even if it does not span a potential scribe by 3 or more fastener rows and there is no evidence of scribe lines within 10 inches of the repair.

Request To Include Exception for Inspections of Areas Under the Dorsal Fin Fairing

Southwest requests that we include an exception for inspections of areas under the dorsal fin fairing. Southwest requests that this area be treated the same as the wing-to-body fairing, i.e., if the area under the dorsal fin fairing has never been stripped or repainted since delivery, then the scribe line inspection should not be required in that area.

We agree. We have added paragraph (n) of this final rule to provide an exception for this area.

Request for Clarification of the Compliance Time

Qantas states since a scribe line can occur at any time during the service life of an airplane and at many locations, this program uses both total flight cycles and structural criticality of location to determine the inspection requirements. Qantas asks if the compliance time takes into account scribe lines induced before the first repainting of the airplane.

We agree to provide clarification. The compliance times specified in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, do not account for scribe lines induced before the first repainting. All analysis was accomplished using the assumption that scribe lines might be induced during repainting only when the sealant is removed from lap and butt joints and around external doublers. The FAA has received no prior reports of scribe line damage on Model 737NG airplanes before the first repainting. We will investigate the reports provided by the commenter and all operators, and will take action as necessary. We have not changed the AD in regard to this issue.

Request To Omit Instructions for Restoring the Surface Finish

ATA, on behalf of its member American, requests that we do not consider as part of the AD the methodology in Part 11—"Surface Finish Restoration" of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009. American states that it has internal processes that meet the intent of the requirement for the reapplication of removed finishes, although those processes may not be identical in material, workflow, or processes.

We partially agree with the commenter. While the unique finishes on the fuselage may warrant using different processes than those used on a

typical fuselage, we disagree with the request because the commenter did not provide details on the processes that meet the intent of the AD. We will consider requests for an approval of an AMOC if data demonstrate that it meets an acceptable level of safety. We did not change the AD in regard to this issue.

Explanation of Changes Made to This AD

We have revised the "Alternative Methods of Compliance (AMOCs)" paragraph in this AD to clarify the delegation authority for the Boeing Commercial Airplanes Organization Designation Authorization. We have also revised paragraph (k) of this final rule to clarify that repairs must be made in accordance with an FAA-approved method.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD affects 782 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	53	$85	$0	$4,505 per inspection cycle.	782	$3,522,910 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–06 The Boeing Company: Amendment 39–16545. Docket No. FAA–2009–0913; Directorate Identifier 2009–NM–101–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of scribe line damage found adjacent to the skin lap joints, decals, and wing-to-body fairings. The Federal Aviation Administration is issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin. Undetected fatigue cracks can grow and cause sudden decompression of the airplane.

Compliance

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

Inspection

(g) At the applicable times specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009 ("the service bulletin"), except as provided in paragraph (i) of this AD, do detailed external inspections for scribe lines in the fuselage skin at lap joints, the splice strap at certain butt joints, the skin or doubler at certain approved repair doublers, and the skin at decals; and do all applicable related investigative and corrective actions, by accomplishing all

actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraphs (j), (k), (l), (m), and (n) of this AD.

Note 1: The inspection exceptions described in subparagraphs 1.a. through 1.f. in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, apply to this AD.

Credit for Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, are considered acceptable for compliance with the corresponding actions specified in this AD.

Exceptions to Service Bulletin Specifications

(i) Where Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Where Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, specifies to contact Boeing for appropriate action, accomplish applicable actions using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(k) Where Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, specifies to contact Boeing for instructions to repair scribe lines: Remove the scribe line damage and install a reinforcing repair using an FAA-approved method.

Note 2: Guidance for repairing scribe damage (e.g., nicks, gouges, scratches, and corrosion) may be found in the Allowable Damage section of the appropriate Boeing 737 Structural Repair Manual (SRM).

Note 3: Operators must obtain an approved damage tolerance evaluation for any repair installed to comply with Section 121.1109(c)(2) or 129.109(c)(2) of the Code of Federal Regulations (14 CFR 121.1109(c)(2) or 129.109(c)(2)).

(l) Inspections are not required in areas where an existing repair covers a potential scribe line or where the scribe line is within 10 inches of the repair, provided the repair spans a minimum of three fastener rows beyond each side of the potential scribe line location (perpendicular to the scribe line direction). If a repair doubler does not span the potential scribe line location by 3 or more fastener rows, but there is no evidence of scribe lines within 10 inches of the repair, then inspections under the repair are not required.

(m) Where Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, specifies a compliance time of "before further flight" for inspecting scribe lines less than 0.001 inch deep for cracks, no further inspections are required by paragraph (g) of this AD, provided that correct sealant removal procedures are used for future work at those locations.

(n) If records show that the airplane has never been stripped and repainted under the dorsal fin fairing since delivery from Boeing, then this AD does not require inspections specified in paragraph (g) of this AD for the butt joint, lap joint, and repairs in the areas under the dorsal fin fairing.

Report

(o) At the applicable time specified in paragraph (o)(1) or (o)(2) of this AD: Submit a report of positive findings of cracks found during the inspections required by paragraph (g) of this AD. You may use Appendix B of Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009. Send the report to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. The report must contain, at a minimum, the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) *If the inspection was done on or after the effective date of this AD:* Submit the report within 30 days after the inspection.

(2) *If the inspection was done before the effective date of this AD:* Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Organization Designation Authorization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(q) You must use Boeing Service Bulletin 737–53A1289, Revision 1, dated November 18, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on December 10, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31899 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1006; Directorate Identifier 2009–CE–057–AD; Amendment 39–16543; AD 2010–26–04]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Model PA–28–161 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that are equipped with Thielert Aircraft Engine GmbH (TAE) Engine Model TAE–125–01 installed per Supplemental Type Certificate (STC) No. SA03303AT. This AD requires installing a full authority digital engine control (FADEC) backup battery, replacing the supplement pilot's operating handbook and FAA approved airplane flight manual, and revising the limitations section of the supplement airplane maintenance manual. This AD was prompted by an incident where an airplane experienced an in-flight engine shutdown caused by a momentary loss

of electrical power to the FADEC. We are issuing this AD to prevent interruption of electrical power to the FADEC, which could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

DATES: This AD is effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in the AD as of February 1, 2011.

ADDRESSES: For service information identified in this AD, contact Thielert Aircraft Engines Service GmbH, Platanenstraße 14, 09350 Lichtenstein, Deutschland; telephone: +49 (37204) 696–0; fax: +49 (37204) 696–1910; Internet: *http://www.thielert.com/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Don O. Young, Aerospace Engineer, Atlanta Aircraft Certification Office (ACO), FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5585; fax: (404) 474–5606; e-mail: *don.o.young@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on October 6, 2010 (75 FR 61655). That NPRM proposed to require installation of a FADEC backup battery, replacement of the supplement pilot's operating handbook and FAA approved airplane flight manual, and revision of the limitations section of the supplement airplane maintenance manual.

Comments

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

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of a FADEC backup battery	7 work-hours × $85 per hour = $595	$780	$1,375	Not applicable.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–04 Piper Aircraft, Inc: Amendment 39–16543; Docket No. FAA–2010–1006; Directorate Identifier 2009–CE–057–AD.

Effective Date

(a) This AD is effective February 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PA–28–161 airplanes, all serial numbers, that are:

(1) Equipped with Thielert Aircraft Engine GmbH (TAE) Engine Model TAE–125–01 installed per Supplemental Type Certificate (STC) No. SA03303AT; and

(2) Certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 72: Engine.

Unsafe Condition

(e) This AD results from an incident where an airplane experienced an in-flight engine shutdown caused by a momentary loss of electrical power to the FADEC. We are issuing this AD to prevent interruption of electrical power to the FADEC, which could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

Compliance

(f) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Modify the engine electrical system by installing a backup battery system and associated wiring and circuitry.	Within the next 100 hours time-in-service after February 1, 2011 (the effective date of this AD) or within 30 days after February 1, 2011 (the effective date of this AD), whichever occurs first.	Follow Thielert Aircraft Engines GmbH Service Bulletin TM TAE 651–0007, Revision 7, dated July 30, 2010.
(2) Revise the airworthiness limitations section to require repetitive replacement of the FADEC backup battery every 12 calendar months. Thereafter, except as provided in paragraph (g) of this AD, no alternative replacement times may be approved for this part.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Incorporate Chapter 40–AMM–04–01 "Airworthiness Limitations, Revision 1", dated January 25, 2010, of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Piper PA28–161 TAE 125–01, Doc. No.: AMM–40–01 (US-Version) Version: 1/1, into TAE Airplane Maintenance Manual Supplement, Piper PA28/TAE 125–01, AMM–40–01 (US-Version), Rev. Issue 1, dated February 3, 2006.
(3) Incorporate Thielert Aircraft Engines GmbH Supplement Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, TAE-No.: 40–0310–40042, issue 2, revision 0, dated June 1, 2010, into the pilot's operating handbook.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Not applicable.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(h) For more information about this AD, contact Don O. Young, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5585; fax: (404) 474–5606; e-mail: *don.o.young@faa.gov.*

Material Incorporated by Reference

(i) You must use the service information contained in table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Thielert Aircraft Engines GmbH Service Bulletin TM TAE 651–0007	7	July 30, 2010
Chapter 40–AMM–04–01 "Airworthiness Limitations, Revision 1", of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Piper PA28–161 TAE 125–01, Doc. No.: AMM–40–01 (US-Version) Version: 1/1	1	January 25, 2010
Thielert Aircraft Engines GmbH Supplement Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, TAE-No.: 40–0310–40042, issue 2	0	June 1, 2010

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

(2) For service information identified in this AD, contact Thielert Aircraft Engines Service GmbH, Platanenstraße 14, 09350 Lichtenstein, Deutschland; telephone: +49 (37204) 696–0; fax: +49 (37204) 696–1910; Internet: *http://www.thielert.com/.*

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

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

Issued in Kansas City, Missouri on December 13, 2010.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31905 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0805; Directorate Identifier 2010–NM–042–AD; Amendment 39–16553; AD 2010–26–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several cases of aileron terminal quadrant support brackets that were manufactured using sheet metal have been found cracked on DHC–8 Series 300 aircraft. Investigation revealed that the failure of the support bracket was due to fatigue. Failure of the aileron terminal quadrant support bracket could result in an adverse reduction of aircraft roll control.

* * * * *

These conditions could result in loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 1, 2011.

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 25, 2010 (75 FR 52290). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several cases of aileron terminal quadrant support brackets that were manufactured using sheet metal have been found cracked on DHC–8 Series 300 aircraft. Investigation revealed that the failure of the support bracket was due to fatigue. Failure of the aileron terminal quadrant support bracket could result in an adverse reduction of aircraft roll control.

This directive mandates the replacement of the aileron terminal quadrant support bracket with a new and improved machined part.

These conditions could result in loss of control of the airplane. The required actions include installing new aileron input quadrant support brackets. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Air Line Pilots Association, International (ALPA), supports the NPRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 13 products of U.S. registry. We also estimate that it will take about 72 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,080 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $93,600, or $7,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–13 Bombardier, Inc.: Amendment 39–16553. Docket No. FAA–2010–0805; Directorate Identifier 2010–NM–042–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–301, -311, and -315 airplanes, certificated in any category; having serial numbers 100 through 530 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Several cases of aileron terminal quadrant support brackets that were manufactured using sheet metal have been found cracked on DHC–8 Series 300 aircraft. Investigation revealed that the failure of the support bracket was due to fatigue. Failure of the aileron terminal quadrant support bracket could result in an adverse reduction of aircraft roll control.

* * * * *

These conditions could result in loss of control of the airplane.

Compliance

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

Actions

(g) For airplanes with an aileron terminal quadrant support bracket having part number (P/N) 85711569: At the applicable times specified in paragraph (g)(1) or (g)(2) of this AD, install a new aileron input quadrant support bracket by incorporating MODSUM 8Q101250, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–43, Revision B, dated October 7, 2009.

(1) For airplanes that have accumulated 30,000 total flight hours or more as of the effective date of this AD: Within 3,000 flight hours after the effective date of this AD.

(2) For airplanes that have accumulated less than 30,000 total flight hours as of the effective date of this AD: Before the accumulation of 33,000 total flight cycles or within 6,000 flight hours after the effective date of this AD, whichever occurs first.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Doing the installation by incorporating MODSUM 8Q101250 is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with Bombardier Service Bulletin 8–57–43, dated August 9, 2002; or Bombardier Service Bulletin 8–57–43, Revision A, dated January 17, 2003.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2009–45, dated December 11, 2009; and Bombardier Service Bulletin 8–57–43, Revision B, dated October 7, 2009; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Service Bulletin 8–57–43, Revision B, dated October 7, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on December 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32325 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0127; Directorate Identifier 2009–NM–242–AD; Amendment 39–16547; AD 2010–26–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a detailed inspection of the entryway door movable ceiling panel for pin migration at either end of the hinge assembly and damage to the pin; a detailed inspection for correct crimp at both ends and damage to hinge stock; a detailed inspection of the ceiling area for any visible cosmetic and/or tie-rod chafing that could be caused by a migrated hinge pin; a detailed inspection for wire damage and/or breakage; and other specified and corrective actions if necessary. This AD results from reports of fault messages caused by improperly crimped hinge pins coming into contact with wires and causing damage. We are issuing this AD to detect and correct improperly crimped hinge pins, which could damage tie rods and wire bundles, causing shorts in many systems, including the spar fuel shut-off valve, oxygen mask deployment, and burned wires, which could be an ignition source in a hidden area of the airplane.

DATES: This AD is effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2011.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Stephen Styskal, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6439; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on February 22, 2010 (75 FR 7557). That NPRM proposed to require a detailed inspection of the entryway door movable ceiling panel for pin migration at either end of the hinge assembly and damage to the pin; a detailed inspection for correct crimp at both ends and damage to hinge stock; a detailed inspection of the ceiling area for any visible cosmetic and/or tie-rod chafing that could be caused by a migrated hinge pin; a detailed inspection for wire damage and/or breakage; and other specified and corrective actions if necessary.

Comments

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

Support for the NPRM

Air Line Pilots Association, International (ALPA) and UPS support the intent of the NPRM.

Request To Clarify the Compliance Requirements in Paragraph (g) of the NPRM

Boeing requested that we clarify the compliance requirements and associated compliance times in paragraph (g) of the NPRM. Boeing stated that the phrase "all applicable other specified and corrective actions" is stated twice, and as a result, the requirements are interpretive and misleading. Boeing pointed out that the proposed requirement to do these actions before further flight is misleading.

We agree to clarify. Other specified actions include re-partmarking the moveable panel ceiling and the hinge assemblies, if necessary. Corrective actions include crimping the hinge assembly, repairing tie-rod chafing, repairing wire damage, and replacing the hinge assembly. The phrase is stated twice, and each phrase has a different purpose. The first purpose is to state that the actions must be done in accordance with Boeing Service Bulletin 767–25–0477, dated August 27, 2009. The second purpose is to state that the other specified and corrective actions must be done before further flight if any pin migration, improper crimping, tie-rod damage or wire damage was found. We have revised paragraph (g) of this AD to clarify the intent.

Request To Revise the Unsafe Condition

Boeing asked that we revise the second sentence of paragraph (e) to state that "The FAA is issuing this AD to detect and correct improperly crimped hinge pins, which could damage tie rods and wire bundles, causing shorts in many systems." Boeing stated that it has determined the probability of an airplane-level hazard to be extremely remote, and disagrees with the references to the spar shut-off valve, oxygen masks, and flammability-related concerns.

We disagree with the request to revise the unsafe condition because the unsafe condition description as written accurately reflects valid safety concerns.

Regarding the spar fuel shut-off valve, although the wiring is redundant, a short to ground will cause the valve circuit breaker to trip, resulting in the valve remaining in the last commanded position. If the valve fails in the open position, it may not be possible to isolate fuel flow from the tanks to the engine during an engine fire. This would be a latent failure of a required system function. While the engine fuel valve may still be available to the flight crew to stop fuel flow to the engine in an emergency, unavailability of the spar fuel shut-off valve eliminates the required isolation capability of the fuel system upstream of the engine.

In regard to the airplane's oxygen system, while failure of the oxygen mask deployment system does not pose a significant airplane-level hazard, unavailability of the oxygen system

could consequently result in exposing the passengers and cabin attendants to hypoxia following a depressurization event.

In regard to the flammability-related concerns, while self-extinguishing and fire-resistant materials are used throughout the airplane, burned wires have resulted from migrated hinge pins and are a potential ignition source in a hidden area.

We have not changed the AD in regard to these issues.

Request To Clarify Requirements for Alternative Method of Compliance (AMOC)

Continental Airlines (CAL) stated that it has addressed the safety issue in accordance with Boeing Service Request 1–132547518, dated October 18, 2005, and requested clarification on the possibility of receiving approval of an alternative method of compliance (AMOC) based on its findings and corrective actions.

We agree to clarify the requirements to receive approval of an AMOC. Under the provisions of paragraph (h) of this AD, we will consider approving any alternative method of compliance if the proposal provides an acceptable level of safety. However, additional substantiation may be required for an AMOC approval based on existing service information and as such, applicants will need to request an AMOC approval in accordance with paragraph (h) of this AD. We have not changed the AD in regard to this issue.

Request To Clarify Inspection Requirements for Wire Bundles

UPS requested that Boeing Service Bulletin 767–25–0477, dated August 27, 2009, be revised to clarify and provide better detail regarding which wire bundles to inspect for damage. UPS stated that this service bulletin does not provide enough detail to properly identify the wire bundles that need to be inspected if a hinge pin is found to have migrated. UPS stated that the "approximate location of damage wire bundles" as stated in Boeing Service Bulletin 767–25–0477, dated August 27, 2009, could allow maintenance personnel to miss damaged wire bundles since it does not specify the location or the wire bundle numbers.

In response to the request from UPS to provide additional detail about wire bundle locations, Boeing Service Bulletin 767–25–0477, dated August 27, 2009, indicates that damaged wire bundles should be located in the vicinity of the migrated pin. The detailed inspections required by this AD cover multiple areas, and we cannot predict which wire bundles may be damaged. Boeing Service Bulletin 767–25–0477, dated August 27, 2009, provides an adequate level of detail to perform the required inspections. Boeing might revise Boeing Service Bulletin 767–25–0477, dated August 27, 2009, in the future, and we might consider additional rulemaking at that time. We have not changed the AD in regard to this issue.

Request To Remove Model 767–300F Airplanes From the Applicability of the NPRM

UPS requested that we remove Model 767–300F airplanes from the applicability of the NPRM. UPS stated that the wire bundles that are subject to the inspections specified in Boeing Service Bulletin 767–25–0477, dated August 27, 2009, for Model 767–300F airplanes only consist of wiring for the crew entry door dome light, and does not consist of wiring for the other systems that are called out by the NPRM. UPS stated that it believed that Boeing supports this statement. UPS stated that it has not experienced any dome light system shorts or burned wires in this area.

We disagree with the request. While the wire bundle that is in close proximity to the ceiling panel hinge pin may indeed contain wiring for the crew entry door dome light, it is possible that additional wiring for other systems is also susceptible to damage from a migrating hinge pin. The wiring that could be affected by a migrating ceiling panel hinge pin on the Model 767–300F includes wiring for the same systems that could be affected by a migrating hinge pin on Model 767–200, –300, and –400ER airplanes. In addition, although UPS has not encountered wire chafing due to a migrating hinge pin, hinge pins have migrated on other airplanes, and wiring damage has resulted. We have not changed the AD in regard to this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

We estimate that this AD affects 273 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	6 work-hours × $85 per hour = $510	$770	$1,280	$349,440

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–08 The Boeing Company: Amendment 39–16547; Docket No. FAA–2010–0127; Directorate Identifier 2009–NM–242–AD.

Effective Date

(a) This AD is effective February 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–25–0477, dated August 27, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Unsafe Condition

(e) This AD results from reports of fault messages caused by an improperly crimped hinge pins on the movable ceiling panel of the entryway door on the forward left side coming into contact with wires and causing damage. The Federal Aviation Administration is issuing this AD to detect and correct improperly crimped hinge pins, which could damage tie rods and wire bundles, causing shorts in many systems, including the spar fuel shut-off valve, oxygen mask deployment, and burned wires, which could be an ignition source in a hidden area of the airplane.

Compliance

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

Inspections and Corrective Actions

(g) Within 72 months after the effective date of this AD: Accomplish the inspections required by paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, and do all applicable corrective actions and part marking, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25–0477, dated August 27, 2009. If, during the following inspections, any pin migration, improper crimping, tie-rod damage, or wire damage is found, do all applicable corrective actions, in accordance with Boeing Service Bulletin 767–25–0477, dated August 27, 2009, before further flight.

(1) A detailed inspection for pin migration at either end of the hinge assembly and to detect damage to the pin.

(2) A detailed inspection for correct crimp at both ends and to detect damage to hinge stock.

(3) A detailed inspection of the ceiling area for any visible cosmetic and tie-rod chafing that could be caused by a migrated hinge pin.

(4) A detailed inspection for wire damage and breakage.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Stephen Styskal, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6439; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Related Information

(i) For more information about this AD, contact Stephen Styskal, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6439; fax (425) 917–6590.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 767–25–0477, dated August 27, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington on December 13, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31967 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1250; Directorate Identifier 2010–SW–075–AD; Amendment 39–16548; AD 2010–26–09]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing emergency airworthiness directive (EAD) for the specified Sikorsky model helicopters. The EAD requires inspecting the LITEF Attitude Heading and Reference System (AHRS) unit of the navigation system to determine if it is at a Mod Status "18." If either AHRS unit is at Mod Status "18," the EAD requires installing placards on the instrument panel to prohibit single pilot instrument flight rule (IFR) and single pilot night flight and reducing airspeeds to 120 knots indicated airspeed (KIAS) if both autopilots uncouple during instrument meteorological conditions (IMC) or night flight. The EAD also requires inserting minimum crew and airspeed limitations into the Limitations section of the applicable Rotorcraft Flight Manual (RFM) to limit the minimum

flight crew to 2 pilots for night flight and IFR flight and to reduce airspeed to 120 KIAS if both autopilots uncouple during IMC or night flight. This amendment contains the same requirements but draws the appropriate distinctions between IFR and IMC as used in the intended operating limitations. Also, unlike the EAD, this AD states the airspeed must be reduced to 120 KIAS if both autopilots uncouple during IMC or night flight. Further, we are removing the limitation contained in the Active Temporary Revisions relating to pilots keeping their hands and feet near the flight controls. This AD was prompted by the need to supersede the EAD to state the distinction between IFR and IMC as used in the operating limitations and to reduce the airspeed to 120 KIAS if both autopilots uncouple during IMC or night flight. The actions specified by this AD are intended to implement operating limitations based on an anomaly in the AHRS related to the 26 volt AC inverter that could result in a decoupling of both autopilots and to prevent loss of control of the helicopter during IMC and during night flight.

DATES: Effective January 12, 2011.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2011.

We must receive comments on this AD by February 28, 2011.

ADDRESSES: Use one of the following addresses to comment on this AD.

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

You may get the service information identified in this AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tony Pigott, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7158, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: On May 19, 2010, we issued EAD No. 2010–11–52, to require inspecting the AHRS unit to determine if it is at a Mod Status "18." If the nameplate indicates that either AHRS unit is a Mod Status "18," the EAD requires installing placards on the instrument panel to prohibit single pilot IFR and single pilot night flight and reducing airspeeds to 120 KIAS if both autopilots uncouple during IMC or night flight. The EAD also requires inserting the Active Temporary Revision listed in Table 1 into the Limitations section of the RFM to limit the minimum flight crew to 2 pilots for IFR and night flight. That action was prompted by reports of intermittent malfunctions of the LITEF AHRS units of the navigation system. The EAD states that the condition, if not corrected, could result in malfunction of the autopilots, inability to reset the autopilots, an uncommanded roll, reduction in rotorcraft functional capabilities, inability of the crew to perform the required tasks, and subsequent loss of control of the helicopter.

Since issuing EAD 2010–11–52, we have discovered that we did not draw the appropriate distinctions between IFR and IMC as used in the intended operating limitations, and we did not state the requirement to reduce the airspeed to 120 KIAS if both autopilots uncouple during IMC or night flight. Further, we did not intend to adopt as a limitation the provision contained in the Active Temporary Revisions relating to pilots keeping their hands and feet near the flight controls as this is considered normal conduct of a helicopter pilot exercising good care and sound judgment regardless of the AHRS unit installed.

We have reviewed Sikorsky Alert Service Bulletin No. 76–34–11, dated May 17, 2010 (ASB). The ASB specifies informing operators of an interim minimum flight crew restriction of two pilots for IFR and night flight for helicopters equipped with LITEF LCR–100, Mod Status "18," AHRS units. The ASB also specifies removing and inspecting the AHRS units to determine if part number (P/N) 145130–7100, Mod Status "18," is installed, and if it is installed, identifying the unit with a placard with a different P/N. Finally, the ASB specifies installing 2 placards, P/N SS9140–1746, or locally fabricated placards, one on each side of the instrument panel.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky model helicopters of these same type designs, this AD supersedes EAD 2010–11–52 by retaining the current requirements but by clarifying the appropriate distinctions between IFR and IMC as used in the intended operating limitations. Also, in this AD we state the requirement to reduce the airspeed to 120 KIAS if both autopilots uncouple during IMC or night flight. Further, we have removed the Active Temporary Revisions to correct the provision relating to pilots keeping their hands and feet near the flight controls. In the place of the Active Temporary Revisions, we are now requiring you to insert a copy of this AD into the Limitations section of the applicable RFM to address the airspeed limitations and the minimum flight crew. Accomplish the actions in this AD by following specified portions of the ASB described previously. This AD does not require installing placards containing the Sikorsky P/N 76070–60019–101 on the AHRS unit as specified in the Sikorsky ASB. Also, this AD revises the unsafe condition statement by stating that the actions are intended to implement operating limitations based on an anomaly in the AHRS related to the 26 volt AC inverter that could result in a decoupling of both autopilots and to prevent loss of control of the helicopter during IMC and night flight.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, determining if the AHRS unit is an affected unit, installing certain placards on the instrument panel, and inserting limitations into the Limitations section of the applicable RFM are required within 5 days, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 1 helicopter in the U.S. registry. We estimate it will take about 1 work hour to inspect the AHRS unit to determine if it is a Mod Status "18," 1 work hour to fabricate and install a placard, and ½ work hour to revise the RFM. The average labor rate is $85 per hour and there are only minimal parts costs. Based on these figures, the total cost impact of this AD on U.S. operators is $213.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1250; Directorate Identifier 2010–SW–075–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

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

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding a new AD to read as follows:

2010–26–09 Sikorsky Aircraft Corporation: Amendment 39–16548; Docket No. FAA–2010–1250; Directorate Identifier 2010–SW–075–AD. Supersedes EAD 2010–11–52; Directorate Identifier 2010–SW–059–AD.

Applicability: Model S–76A, B, and C helicopters, with LITEF LCR–100, Attitude Heading and Reference System (AHRS) Unit, part number (P/N) 145130–7100, installed, certificated in any category.

Compliance: Within 5 days, unless accomplished previously, and any time thereafter when installing a LITEF LCR–100, AHRS Unit, P/N 145130–7100.

To implement operating limitations based on an anomaly in the AHRS related to the 26-volt AC inverter that could result in a decoupling of both autopilots and to prevent loss of the helicopter during instrument meteorological conditions (IMC) and while operating under instrument flight rules (IFR) and night flight, do the following:

(a) By referencing the nameplate of the No. 1 and No. 2 AHRS unit, determine whether the modification (Mod) status is at "18." If the Mod status is "18" for either AHRS unit:

(1) Install instrument panel placards as shown in Figure 2 in the areas depicted in Figure 3 of Sikorsky Alert Service Bulletin No. 76–34–11, dated May 17, 2010 (ASB), and by following the Accomplishment Instructions, paragraph 3.A.(6)(c) through (d) of the ASB.

(2) Revise the "Minimum Flight Crew" section of the Operating Limitations section of the Rotorcraft Flight Manual (RFM) as follows: "For helicopters with an LCR–100 Mod Status '18' AHRS installed, two pilots are required for IFR and night flights."

(3) Revise the "Airspeed Limits" section of the Operating Limitations section of the RFM as follows: "For helicopters with an LCR–100 Mod Status '18' AHRS installed, airspeed is limited to 120 knots indicated airspeed (KIAS) when both autopilots are uncoupled and operating at night or in IMC."

(4) When present, remove and discard the following Active Temporary Revisions from the Operating Limitations section of the RFM for each affected helicopter:

TABLE 1

Model	RFM document No.	Active temporary rev. No.
S–76A	SA–4047–76–1	T–Revision 3.
S–76B	SA 4047–76B–1	T–Revision 3.
S–76C (TurboMeca Arriel 1S1 engines installed)	SA 4047–76C–1	T–Revision 3.
S–76C (TurboMeca Arriel 2S1 engines installed)	SA 4047–76C–10	T–Revision 4.
S–76C (TurboMeca Arriel 2S1 engines installed and s/n 760511 and subsequent)	SA 4047–76C–14	T–Revision 4.
S–76C (TurboMeca Arriel 2S2 engines installed)	SA 4047–76C–15	T–Revision 1.

(5) Revise the Operating Limitations section of the RFM by inserting a copy of this AD into the appropriate section of the RFM.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, *Attn:* Tony Pigott, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7158, fax (781) 238–7170.

(c) The Joint Aircraft System/Component (JASC) Code is 3420: Navigation.

(d) Installing the placards shall be done by following the specified portions of Sikorsky Alert Service Bulletin No. 76–34–11, dated May 17, 2010. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on January 12, 2011.

Issued in Fort Worth, Texas, on December 13, 2010.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–31962 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0232; Directorate Identifier 2009–NM–032–AD; Amendment 39–16549; AD 2010–26–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–200C, –200F, –400, –400D, and –400F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Model 747–200C, –200F, –400, –400D, and –400F series airplanes. That AD currently requires repetitive inspections for cracks in the overlapping (upper) skin of the upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46; and related investigative and corrective actions, if necessary. This new AD expands the inspection area in the existing AD, and adds a modification of certain lap joints and certain post-repair inspections of the lap joints. Accomplishing the modification would end the repetitive inspections required by the existing AD for the length of lap joint that is modified. This AD results from a structural review of affected skin lap joints for widespread fatigue damage. We are issuing this AD to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization of the airplane.

DATES: This AD becomes effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2011.

On April 13, 2006 (71 FR 12122, March 9, 2006), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nicholas Han, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–05–09, Amendment 39–14506 (71 FR 12122, March 9, 2006). The existing AD applies to certain Model 747–200C, –200F, –400, –400D, and –400F series airplanes. That NPRM was published in the **Federal Register** on March 18, 2010 (75 FR 13046). That NPRM proposed to continue to require repetitive inspections for cracks in the overlapping (upper) skin of the upper fastener row of the lap joints of the fuselage skin in Sections 41, 42, and 46; and related investigative and corrective actions, if necessary. That NPRM also proposed to expand the inspection area in the existing AD, and add a modification of certain lap joints and certain post-repair inspections of the lap joints. Accomplishing the modification would end the repetitive inspections required by the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Revise Certain Language in Paragraph (k) of the NPRM

Boeing asked that we revise the language in paragraph (k) of the NPRM to indicate that additional actions are required in the area of the modification for operation beyond 15,000 total flight cycles after doing the proposed modification. Boeing stated that Revision 2 of Boeing Alert Service Bulletin 747–53A2499 is currently in work at the Boeing Company, and that Revision 2 recommends accomplishing additional actions after doing the modification.

Since this comment was submitted, we have received and reviewed Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; and Revision 1, dated October 30, 2008; were referred to in the NPRM as the appropriate source of service information for accomplishing the actions. No more work is necessary for airplanes on which Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, was used for doing the required actions. Revision 2 of this service bulletin moves certain airplanes from Group 1 to Groups 15 and 16, adds post-modification actions, and contains editorial changes.

We have revised paragraphs (c), (g), (h), (i), (j), and (k) of this AD to refer to

Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. In addition, we have removed Notes 1 and 2 of this AD since that information is incorporated into Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. We have also added a new paragraph (n) to the AD to give credit for accomplishing the specified actions in accordance with Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008.

Although Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, includes post-modification actions, this AD will not mandate those actions. The threshold for the skin lap joint modification mandated by this AD is 30,000 total flight cycles. Adding 15,000 flight cycles to the threshold would extend the compliance time for the recommended additional actions to 45,000 total flight cycles. We have determined that it is highly unlikely that a Model 747 airplane will reach that number of total flight cycles. This determination also takes into consideration the proposed wide spread fatigue damage (WFD) operating rules imposing operating limits that could be significantly lower than 45,000 total flight cycles.

In light of these factors, we have determined that this final rule must be issued without any further delay due to the severity of the unsafe condition addressed by this AD. Further rulemaking might be issued in the future to mandate the additional actions included in Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. We have not changed the AD in this regard.

Request To Delay AD Pending New Service Information

Japan Airlines (JAL) asked that we delay issuance until the manufacturer can release Revision 2 of Boeing Alert Service Bulletin 747–53A2499. JAL stated that Boeing has issued Service Bulletin Information Notices 747–53A2499 IN 01, dated April 2, 2009; and 747–53A2499 IN 02, dated September 10, 2009; to Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, to notify operators of a typo and revised drawings. JAL noted that operators cannot accomplish a correct inspection and modification unless the information provided in Boeing Service Bulletin Information Notices 747–53A2499 IN 01 and 747–53A2499 IN 02 is used. JAL added that including Revision 2 of this service bulletin would reduce unnecessary burden on both operators and the manufacturer.

All Nippon Airways (ANA) also asked that the modification be done in accordance with Revision 2 of Boeing Alert Service Bulletin 747–53A2499 instead of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008. ANA stated that it has already performed the terminating modification at stringer 6 using Boeing Alert Service Bulletin 747–53A2499, Revision 1, and had to request AMOCs during the modification because certain drawings in Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; and Revision 1, dated October 30, 2008; were not specific to the modification. ANA added that this will reduce the AMOC requests to this proposed AD, in addition to reducing the maintenance burden.

We partially agree with the commenters. We do not agree to delay this AD, due to the severity of the unsafe condition. However, as described previously, Boeing has issued Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. Therefore, we have revised the requirements in this AD to allow the use of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, for accomplishing the specified actions.

Conclusion

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

Costs of Compliance

There are about 735 airplanes of the affected design in the worldwide fleet. This AD affects 96 airplanes of U.S. registry.

The actions that are required by AD 2006–05–09 and retained in this AD take about 541 work-hours per airplane, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $45,985 per airplane, per inspection cycle.

The new Area 2 inspections take about 124 work-hours per airplane, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the new inspections specified in this AD for U.S. operators is $1,011,840, or $10,540 per airplane, per inspection cycle.

The new modification takes about 4,799 work hours per airplane, at an average labor rate of $85 per work-hour. Required parts cost per airplane will be minimal. Based on these figures, the estimated cost of the new modification specified in this AD for U.S. operators is $39,159,840, or $407,915 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–14506 (71 FR 12122, March 9, 2006) and by adding the following new airworthiness directive (AD):

2010–26–10 The Boeing Company: Amendment 39–16549. FAA–2010–0232; Directorate Identifier 2009–NM–032–AD.

Effective Date

(a) This AD becomes effective February 1, 2011.

Affected ADs

(b) This AD supersedes AD 2006–05–09.

Applicability

(c) This AD applies to The Boeing Company Model 747–200C, –200F, –400, –400D, and –400F series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from a structural review of affected skin lap joints for widespread fatigue damage. The Federal Aviation Administration is issuing this AD to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization of the airplane.

Compliance

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

Restatement of Requirements of AD 2006–05–09, With Revised Service Information

Initial Inspections and Related Investigative and Corrective Actions

(g) For airplanes identified in Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005: At the applicable time specified in Table 1 of this AD, do an external surface high frequency eddy current (HFEC), external low frequency eddy current (LFEC), and internal LFEC inspection, as applicable, for cracks in the overlapping (upper) skin of the upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46, and any applicable related investigative and corrective actions by doing all of the actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; Revision 1, dated October 30, 2008; or Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. Do any applicable related investigative and corrective actions before further flight. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, may be used.

TABLE 1—INITIAL COMPLIANCE TIME

For airplanes on which Structural Significant Items (SSIs) F–25G, F–25H, and F–25I—	Inspect—
(1) Have not been inspected in accordance with paragraph (i) of AD 2004–07–22 R1, Amendment 39–15326, using the HFEC method.	Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after April 13, 2006 (the effective date of AD 2006–05–09), whichever occurs later.
(2) Have been inspected in accordance with paragraph (i) of AD 2004–07–22 R1, using the HFEC method.	Within 3,000 flight cycles after the most recent supplemental structural inspection document (SSID) inspection of each applicable structural significant item (as given in Boeing Document D6–35022, "SSID for Model 747 Airplanes," Revision G, dated December 2000), or within 1,000 flight cycles after April 13, 2006, whichever occurs later.

Repetitive Inspections

(h) Repeat the applicable inspections required by paragraph (g) of this AD thereafter at intervals not to exceed those specified in paragraph 1.E., "Compliance," (including the note) of Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; Revision 1, dated October 30, 2008; or Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, may be used.

New Requirements of This AD

Repetitive Inspections/Investigative and Corrective Actions

(i) For all airplanes: Do an external HFEC inspection of the lap joints in Sections 41, 42, and 46 for cracks, by doing all the actions, including all applicable related investigative and corrective actions, specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. Do the inspection at the applicable time specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010; except as required by paragraph (m) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the times specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraphs (g) and (h) of this AD.

(j) For areas on which a lap joint repair was installed and the repair doubler is greater than or equal to 40 inches long: Do initial and repetitive internal HFEC inspections for cracks by doing all the actions, including all applicable corrective actions, specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, except as required by paragraph (l) of this AD. Do the inspections and corrective actions at the times specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, except as required by paragraph (m) of this AD.

Terminating Action

(k) Modify the applicable lap joints in Sections 41 and 42 by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, at the time specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010; except as required by paragraphs (l) and (m) of this AD. Accomplishing this modification terminates the repetitive inspections of the skin lap joints in Sections 41 and 42 required by paragraphs (i) and (j) of this AD for the length of lap joint that is modified.

Exceptions to Service Bulletin Procedures

(l) Where Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(m) Where Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, specifies a compliance time after the date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Credit for Actions Done Using Previous Service Information

(n) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Nicholas Han, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) or other person authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2006–05–09 are approved as alternative methods of compliance with the corresponding requirements of this AD.

Material Incorporated by Reference

(p) You must use Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; or Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005, on April 13, 2006 (71 FR 12122, March 9, 2006).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on December 13, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31992 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0674; Directorate Identifier 2010–NM–012–AD; Amendment 39–16546; AD 2010–26–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive inspections for cracking in the body skin around the aft corners of the nose wheel well; for certain airplanes, repetitive inspections for cracking in the skin splice plate at the aft corners of the nose wheel well; and related investigative and corrective actions if necessary. This AD also requires repetitive post-modification inspections for cracking in the body skin and the skin splice plate; for certain airplanes, an inspection for steel cross-shaped doublers on the larger aluminum doublers; and corrective action if necessary. This AD also requires repetitive surface high frequency eddy current (HFEC) inspections of a certain bulkhead outer chord, skin splice plate, and outer chord radius filler for cracking; repetitive detailed inspections for cracking of the bulkhead frame web and body skin; and corrective actions if necessary. This AD provides for optional terminating action for certain repetitive inspections. This AD was prompted by reports of cracking of the fuselage skin and adjacent internal skin splice plate at the left and right nose wheel well aft corners, and the outer chord of the body station (BS) 400 bulkhead. We are issuing this AD to detect and correct cracking of the fuselage skin or splice plate, which, together with cracking of the bulkhead outer chord, could result in large skin cracks and subsequent in-flight rapid decompression of the airplane.

DATES: This AD is effective February 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2011.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Steven Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590; e-mail: *steven.fox@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on July 8, 2010 (75 FR 39189). That NPRM proposed to require repetitive inspections for cracking in the body skin around the aft corners of the nose wheel well; for certain airplanes, repetitive inspections for cracking in the skin splice plate at the aft corners of the nose wheel well; and related investigative and corrective actions if

necessary. The NPRM also proposed to require repetitive post-modification inspections for cracking in the body skin and the skin splice plate; for certain airplanes, an inspection for steel cross-shaped doublers on the larger aluminum doublers; and corrective action if necessary. The NPRM also proposed to require repetitive surface high frequency eddy current (HFEC) inspections of a certain bulkhead outer chord, skin splice plate, and outer chord radius filler for cracking; repetitive detailed inspections for cracking of the bulkhead frame web and body skin; and corrective actions if necessary. That NPRM also proposed to provide for optional terminating action for certain repetitive inspections.

Comments

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

Request To Revise Paragraph (r) of the NPRM

Boeing requested that we revise paragraph (r) of the NPRM to note that the threshold of the initial inspection, in accordance with Boeing Document No. D6–35022, Volumes 1 and 2 "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision G, dated December 2000, Item F–4, remains as given in AD 2004–07–22 R1 (73 FR 1052, January 7, 2008) (A correction to AD 2004–07–22 R1 was published in the **Federal Register** on February 14, 2008 (73 FR 8589)). Boeing stated that while the inspection method and intervals provided in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, are alternative methods of compliance (AMOCs) to Revision G of the Model 747 SSID, Item F–4, the requirement to comply with the SSID inspection threshold remains as given in AD 2004–07–22 R1.

We disagree with the request to revise paragraph (r) of this AD to include the requested notation. Paragraph (r) of this AD does not provide any indication of change to the initial inspection threshold for the initial inspection according to Revision G of the Model 747 SSID, Item F–4. As the commenter stated, the inspection threshold for Item F–4 remains as given in AD 2004–07–22 R1. Paragraph (b) of this AD also indicates that no other AD is affected by this AD. No change has been made to the AD in this regard.

Request To Include Alternative Inspection Procedures as AMOCs or To Extend the Grace Period

Japan Airlines (JAL) requested approval of an AMOC for inspections for airplanes that have been previously repaired. JAL stated that 14 of its Model 747–400 airplanes have had repair doublers already installed in the affected areas that deviate from Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009; therefore, alternative inspection procedures are necessary for the repaired structure. JAL stated that it will have to obtain AMOC approval for each of its 14 airplanes. JAL also stated that since it takes additional work for both JAL and Boeing to obtain the AMOC approval, an exception should be allowed to admit all of the existing repairs as an AMOC for the proposed actions. JAL also proposed the alternative of an approval letter from the FAA for their existing repairs before the effective date of the AD. As an alternative, JAL requested a grace period to allow an extended compliance time for the inspection of previously repaired airplanes.

We disagree with the request for AMOC approval for previously repaired airplanes and for a grace period. An AMOC cannot be included in an AD, because an AMOC can be written for an AD only after the AD is published. Because the repairs previously done on these 14 airplanes can be unique to each airplane and are different from the repair requirements of this AD, each instance will need to be re-evaluated for this AD as an AMOC to ensure continued operational safety. However, under the provisions of paragraph (u) of this AD, after the AD is published we will consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that the previous repairs would provide an acceptable level of safety.

We also disagree with the request to include a grace period. A grace period of 1,500 flight hours from the effective date of this AD was already included in paragraphs (k), (o), and (r) of this AD.

No change has been made to this AD.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 160 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspections: Body Skin and Skin Splice Plate.	1	$85	$85	160	$13,600.
Modification: Groups 1–3 [1]	180	85	15,300	Up to 27	Up to $413,100.
Modification: Groups 1–3 [2]	320	85	27,200	Up to 27	Up to $734,400.
Modification: Groups 4–8 [3]	180	85	15,300	Up to 133	Up to $2,034,900.
Modification: Groups 4–7 [4]	40	85	3,400	Up to 44	Up to $149,600.
Post-Mod LFEC Inspection [5]	6	85	510	Up to 160	Up to $81,600.
Inspections: Bulkhead Outer Chord [6].	4	85	340	Up to 160	Up to $54,400.

[1] Installation of skin and splice plate doubler for Groups 1–3 airplanes that have not done Boeing Service Bulletin 747–53–2150 or Figure 35 of Section 53–30–03 of the Boeing 747 Structural Repair Manual.

[2] Installation of skin and splice plate doubler for Groups 1–3 airplanes that have done Boeing Service Bulletin 747–53–2150 or Figure 35 of Section 53–30–03 of the Boeing 747 Structural Repair Manual.

[3] Installation of skin and splice plate doubler for Groups 4–8 airplanes.

[4] Installation of splice plate doubler for Groups 4–7 airplanes changed before Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

[5] Inspection for skin cracks around the fasteners at the periphery of the modification doublers.

[6] Includes inspection of the frame web and body skin.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–07 The Boeing Company: Amendment 39–16546; Docket No. FAA–2010–0674; Directorate Identifier 2010–NM–012–AD.

Effective Date

(a) This AD is effective February 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of cracking of the fuselage skin and adjacent internal skin splice plate at the left and right nose wheel well aft corners, and the outer chord of the body station (BS) 400 bulkhead. The Federal Aviation Administration is issuing this AD to detect and correct cracking of the fuselage skin or splice plate, which, together with cracking of the bulkhead outer chord, could result in large skin cracks and subsequent in-flight rapid decompression of the airplane.

Compliance

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

Pre-Modification Inspections

(g) For airplanes in Groups 1 through 3, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have not been modified in accordance with Boeing Service Bulletin 747–53–2150; have not been repaired in accordance with Figure 35 of Section 53–30–03 of Boeing 747 Structural Repair Manual (SRM); and have not been modified in accordance with Boeing Alert Service Bulletin 747–53A2305: Before the accumulation of 3,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, and skin splice plate at the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(h) For airplanes in Groups 1 through 3, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have been modified in accordance with Boeing Service Bulletin 747–53–2150; or repaired in accordance with Figure 35 of Section 53–30–03 of Boeing 747 SRM: Within 6,000 flight cycles after doing the modification or repair, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, and skin splice plate at the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(i) For airplanes in Groups 4 through 7, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have not been modified in accordance with Boeing Alert Service Bulletin 747–53A2305: Prior to the accumulation of 3,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(j) For airplanes in Groups 4 through 7, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have been modified in accordance with Boeing Service Bulletin 747–53–2305, dated June 27, 1991; or Revision 1, dated May 22, 1997: Within 1,000 flight cycles after the effective date of this AD, do a one-time external general visual inspection for steel cross-shaped doublers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009. If no cross-shaped doublers are installed, within 1,500 flight cycles after the effective date of this AD, install cross-shaped doublers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(k) For airplanes in Group 8, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009: Prior to the accumulation of 3,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(l) If no crack is found during any inspection required by paragraph (g), (h), (i), or (k) of this AD, repeat the applicable inspection specified in paragraph (g), (h), (i), or (k) of this AD thereafter at intervals not to exceed 1,500 flight cycles, until the modification specified in paragraph (n) of this AD is accomplished.

(m) If any crack is found during any inspection required by paragraph (g), (h), (i), (k), or (l) of this AD, before further flight, modify the aft corners of the nose wheel well by installing modification doublers and doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2,

dated January 15, 2009, except as required by paragraph (t) of this AD.

Optional Terminating Action

(n) Modification of the aft corners of the nose wheel well by installing modification doublers and doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, terminates the repetitive inspections required by paragraph (l) of this AD for the modified side only. Where Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, specifies to contact Boeing for appropriate action, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

Post-Modification Repetitive Inspections

(o) For airplanes on which the modification specified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, has been done: At the applicable time specified in paragraph (o)(1) or (o)(2) of this AD, do an external low frequency eddy current inspection for skin cracks around the fasteners at the periphery of the modification doublers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(1) For airplanes on which the edge row fastener holes common to the external modification doublers have been zero-timed in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009: Within 15,000 flight cycles after accomplishing the modification, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the edge row fastener holes common to the external modification doublers have not been zero-timed in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009: Prior to the accumulation of 15,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(p) If no cracking is found during the inspection required by paragraph (o) of this AD, repeat the inspection specified in paragraph (o) of this AD thereafter at intervals not to exceed 1,500 flight cycles.

(q) If any cracking is found during any inspection required by paragraph (o) or (p) of this AD, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

Body Station (BS) 400 Bulkhead Outer Chord Inspection

(r) For all airplanes: At the latest of the times specified in paragraphs (r)(1), (r)(2), and (r)(3) of this AD, do a surface HFEC inspection for cracking in the BS 400 bulkhead outer chord, skin splice plate, and outer chord radius filler; and a detailed inspection for cracking of the bulkhead frame web and body skin; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009. If no cracking is found during any inspection, repeat the inspection one time within 6,000 flight cycles, and thereafter at intervals not to exceed 3,000 flight cycles.

(1) Before the accumulation of 20,000 total flight cycles.

(2) Within 3,000 flight cycles after doing the HFEC inspection required by AD 2004–07–22 R1, Amendment 39–15326, for structural significant item (SSI) F–4B of the Boeing Document No. D6–35022, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision G, dated December 2000.

(3) Within 1,500 flight cycles after the effective date of this AD.

(s) If any cracking is found during any inspection required by paragraph (r) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, except as required by paragraph (t) of this AD. Within 6,000 flight cycles after doing the repair, do the inspections specified in paragraph (r) of this AD, and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

Service Bulletin Exception

(t) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

Alternative Methods of Compliance (AMOCs)

(u)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Steven Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590. Information may be e-mailed to: *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Related Information

(v) For more information about this AD, contact Steven Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590; *e-mail: steven.fox@faa.gov.*

Material Incorporated by Reference

(w) You must use Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, to do the actions required by this AD, unless the AD specifies otherwise. The optional actions, if accomplished, shall be done in accordance with Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on December 13, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31985 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1201; Directorate Identifier 2010–NM–081–AD; Amendment 39–16551; AD 2010–26–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–211, –212, –231, and –232 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A manufacturing quality non-conformity has been identified that resulted in the under-crimping of ring tags on a batch of In-tank Fuel Harnesses.

The affected ring tags are used to join individual electrical wires in the Wing Tank harness installations to in-tank equipment on QT [Tank Quantity] circuit.

The failure of a one or more ring tag crimp connections may result in the disconnection of the electrical wire with a possibility that the loose wire ends can contact the tank structure. When combined with a loss of equipment surface protection this constitutes a potential source of ignition in a fuel tank and consequent danger of fire or explosion.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective January 12, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 12, 2011.

We must receive comments on this AD by February 11, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0027, dated February 19, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A manufacturing quality non-conformity has been identified that resulted in the under-crimping of ring tags on a batch of In-tank Fuel Harnesses.

The affected ring tags are used to join individual electrical wires in the Wing Tank harness installations to in-tank equipment on QT [Tank Quantity] circuit.

The failure of a one or more ring tag crimp connections may result in the disconnection of the electrical wire with a possibility that the loose wire ends can contact the tank structure. When combined with a loss of equipment surface protection this constitutes a potential source of ignition in a fuel tank and consequent danger of fire or explosion.

This AD requires a one-time [special detailed] inspection to check the integrity of the ring tags and performance of corrective actions as necessary.

The corrective actions include performing a manual pull test to confirm the integrity of the ring tag, and if necessary, replacing the ring tag with a new ring tag. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–28A1173, dated October 21, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of these airplane models with these serial numbers, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1201; Directorate Identifier 2010–NM–081–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–12 Airbus: Amendment 39–16551. Docket No. FAA–2010–1201; Directorate Identifier 2010–NM–081–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 12, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A321–211, –212, –231, and –232 airplanes, certificated in any category, with manufacturer serial numbers 3051, 3067, 3070, 3075, 3081, 3098, 3106, 3112, 3120, 3126, and 3130.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

A manufacturing quality non-conformity has been identified that resulted in the under-crimping of ring tags on a batch of In-tank Fuel Harnesses.

The affected ring tags are used to join individual electrical wires in the Wing Tank harness installations to in-tank equipment on QT circuit.

The failure of a one or more ring tag crimp connections may result in the disconnection of the electrical wire with a possibility that the loose wire ends can contact the tank structure. When combined with a loss of equipment surface protection this constitutes a potential source of ignition in a fuel tank and consequent danger of fire or explosion.

* * * * *

Compliance

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

Actions

(g) Within 600 flight hours after the effective date of this AD, inspect the ring tags of the wing tank harnesses (QT circuit) for integrity and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28A1173, dated October 21, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(i) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2010–0027, dated February 19, 2010; and Airbus Service Bulletin A320–28A1173, dated October 21, 2008; for related information.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A320–28A1173, dated October 21, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the

availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on December 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31991 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0771; Airspace Docket No. 10–AGL–12]

Amendment of Class E Airspace; Mansfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Mansfield, OH, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Mansfield Lahm Regional Airport, Mansfield, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Mansfield, OH, creating additional controlled airspace at Mansfield Lahm Regional Airport (75 FR 64965) Docket No. FAA–2010–0771. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Mansfield Lahm Regional Airport, Mansfield, OH. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Mansfield Lahm Regional Airport, Mansfield, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL OH E5 Mansfield, OH [Amended]

Mansfield, Mansfield Lahm Regional Airport, OH
(Lat. 40°49′17″ N., long. 82°31′00″ W.)
Galion, Galion Municipal Airport, OH
(Lat. 40°45′12″ N., long. 82°43′26″ W.)
Shelby, Shelby Community Airport, OH
(Lat. 40°52′22″ N., long. 82°41′51″ W)
Willard, Willard Airport, OH
(Lat. 41°02′20″ N., long. 82°43′28″ W.)
Mansfield VORTAC
(Lat. 40°52′07″ N., long. 82°35′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Mansfield Lahm Regional Airport, and within a 6.3-mile radius of Galion Municipal Airport, and within a 6.3-mile radius of Shelby Community Airport, and within a 6.3-mile radius of Willard Airport, and within 4 miles each side of the 137° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 11.1 miles southeast of the airport, and within 4 miles each side of the 317° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 10.7 miles northwest of the airport, and within 4 miles each side of the 047° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 11.2 miles northeast of the airport, and within 4 miles each side of the 227° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 10.9 miles southwest of the airport, and within 6.1 miles each side of the Mansfield VORTAC 307° radial extending from the 6.9-mile radius to 13.3 miles northwest of the VORTAC, and within 4.4 miles each side of the Mansfield VORTAC 130° radial extending from the 6.9-mile radius to 13.8 miles southeast of the VORTAC.

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32571 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0842; Airspace Docket No. 10–ASW–11]

Amendment of Class E Airspace; Taos, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Taos, NM. Decommissioning of the Ski non-directional beacon (NDB) at Taos Regional Airport, Taos, NM, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Taos, NM, reconfiguring controlled airspace at Taos Regional Airport (75 FR 66345) Docket No. FAA–2010–0842. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Taos, NM area. Decommissioning of the Ski NDB and cancellation of the NDB approach at Taos Regional Airport has made this action necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

* * * * *

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

* * * * *

ASW NM E5 Taos, NM [Amended]

Taos Regional Airport, NM
(Lat. 36°27′29″ N., long. 105°40′21″ W.)
Taos VORTAC
(Lat. 36°36′32″ N., long. 105°54′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Taos Regional Airport and within 1.5 miles each side of the 129° radial from the Taos VORTAC extending from the 6.5-mile radius to 9.4 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface beginning at lat. 36°07′00″ N., long. 105°47′42″ W., thence via the 21.3-mile arc of Taos Regional Airport clockwise to lat. 36°48′00″ N., long. 105°47′35″ W., thence to lat. 36°30′00″ N., long. 105°30′02″ W., thence to the point of beginning.

Issued in Fort Worth, Texas on December 15, 2010.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32567 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0769; Airspace Docket No. 10–ACE–9]

Amendment of Class E Airspace; Farmington, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Farmington, MO, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Farmington Regional Airport, Farmington, MO. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Farmington, MO, creating additional controlled airspace at Farmington Regional Airport (75 FR 64969), Docket No. FAA–2010–0769. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Farmington Regional Airport, Farmington, MO. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ACE MO E5 Farmington, MO [Amended]

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Farmington VORTAC
(Lat. 37°40′24″ N., long. 90°14′03″ W.)
Perrine NDB
(Lat. 37°45′50″ N., long. 90°25′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport, and within 4 miles each side of the 204° bearing from the airport extending from the 6.4-mile radius to 11.5 miles southwest of the airport, and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 6.4-mile radius to 7.9 miles northeast of the airport, and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius of the airport to the VORTAC.

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32570 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0770; Airspace Docket No. 10–AGL–11]

Amendment of Class E Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Columbus, OH, area, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Port Columbus International Airport, Columbus, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Columbus, OH, creating additional controlled airspace at Port Columbus International Airport (75 FR 64966) Docket No. FAA–2010–0770. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective

September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Port Columbus International Airport, Columbus, OH. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Port Columbus International Airport, Columbus, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

AGL OH E5 Columbus, OH (Amended)

Columbus, Port Columbus International Airport, OH
(Lat. 39°59′53″ N., long. 82°53′31″ W.)
Columbus, Rickenbacker International Airport, OH
(Lat. 39°48′50″ N., long. 82°55′40″ W.)
Columbus, Ohio State University Airport, OH
(Lat. 40°04′47″ N., long. 83°04′23″ W.)
Columbus, Bolton Field Airport, OH
(Lat. 39°54′04″ N., long. 83°08′13″ W.)
Columbus, Darby Dan Airport, OH
(Lat. 39°56′31″ N., long. 83°12′18″ W.)
Lancaster, Fairfield County Airport, OH
(Lat. 39°45′20″ N., long. 82°39′26″ W.)
Don Scott NDB
(Lat. 40°04′49″ N., long. 83°04′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Port Columbus International Airport, and within 3.3 miles either side of the 094° bearing from Port Columbus International Airport extending from the 7-mile radius to 12.1 miles east of the airport, and within a 7-mile radius of Rickenbacker International Airport, and within 4 miles either side of the 045° bearing from Rickenbacker International Airport extending from the 7-mile radius area to 12.5 miles northeast of the airport, and within a 6.5-mile radius of the Ohio State University Airport, and within 3 miles either side of the 091° bearing from the Don Scott NDB extending from the 6.5-mile radius area to 9.8 miles east of the NDB, and within a 7.4-mile radius of Bolton Field Airport, and within a 6.4-mile radius of Fairfield County Airport, and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH, Class E airspace area.

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32575 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0841; Airspace Docket No. 10–ACE–11]

Amendment of Class E Airspace; Johnson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Johnson, KS, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Stanton County Municipal Airport, Johnson, KS. Minor adjustments to geographic coordinates would also be made. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Johnson, KS, creating additional controlled airspace at Stanton County Municipal Airport (75 FR 64968) Docket No. FAA–2010–0841. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface

to accommodate SIAPs at Stanton County Municipal Airport, Johnson, KS. This action is necessary for the safety and management of IFR operations at the airport. Adjustments to the geographic coordinates for the airport would also be made in accordance with the FAA's National Aeronautical Navigation Services.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Stanton County Municipal Airport, Johnson, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ACE KS E5 Johnson, KS [Amended]

Stanton County Municipal Airport, KS
(Lat. 37°35′07″ N., long. 101°43′56″ W.)
Bear Creek NDB
(Lat. 37°38′08″ N., long. 101°44′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Stanton County Municipal Airport, and within 8 miles west and 4 miles east of the Bear Creek NDB 358° bearing extending from the 6.6-mile radius to 16 miles north of the NDB.

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32569 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0837; Airspace Docket No. 10–ACE–10]

Establishment of Class E Airspace; Central City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Central City, NE, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Central City Municipal—Larry Reineke Field Airport, Central City, NE. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Central City, NE, creating controlled airspace at Central City Municipal—Larry Reineke Field Airport (75 FR 64971) Docket No. FAA–2010–0837. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Central City Municipal—Larry Reineke Field Airport, Central City, NE. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority

described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Central City Municipal—Larry Reineke Field Airport, Central City, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ACE NE E5 Central City, NE [New]

Central City Municipal—Larry Reineke Field Airport, IL
(Lat. 41°06′42″ N., long. 98°03′05″ W.)
That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Central City Municipal—Larry Reineke Field Airport.

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32573 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0838; Airspace Docket No. 10–AGL–13]

Establishment of Class E Airspace; Benton, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Benton, IL, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Benton Municipal Airport, Benton, IL. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 22, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Benton, IL, creating controlled airspace at Benton Municipal Airport (75 FR 65254) Docket No. FAA–2010–0838. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Benton Municipal Airport, Benton, IL. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and

effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IL E5 Benton, IL [New]

Benton Municipal Airport, IL
(Lat. 38°00′24″ N., long. 88°56′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Benton Municipal Airport.

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32574 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0919; Airspace Docket No. 10–ANM–11]

Modification of Class E Airspace; Rawlins, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend existing Class E airspace at Rawlins, WY. The decommissioning of the Sinclair Non-Directional Radio Beacon (NDB) at Rawlins Municipal Airport/Harvey Field, has made this action necessary. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: 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 October 26, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Rawlins, WY (75 FR 65582). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E surface airspace at Rawlins Municipal Airport/Harvey Field. The airspace is being reconfigured due to the decommissioning of the Sinclair NDB, and cancellation of the NDB approach. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Rawlins Municipal Airport/Harvey Field, Rawlins, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Rawlins, WY [Modified]

Rawlins Municipal Airport/Harvey Field, WY
(Lat. 41°48′20″ N., long. 107°12′00″ W.)

Within a 4.3-mile radius of Rawlins Municipal Airport/Harvey Field and within 4.3 miles north and 3 miles south of the 089° bearing from Rawlins Municipal Airport/Harvey Field extending from the 4.3-mile radius to 7 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on December 16, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–32580 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0772; Airspace Docket No. 10–ASW–10]

Revocation of Class E Airspace; Lone Star, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Lone Star, TX. Abandonment of the former Lone Star Steel Company

Airport and cancellation of all Standard Instrument Approach Procedures (SIAP) has eliminated the need for controlled airspace in the Lone Star, TX, area. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

DATES: *Effective date:* 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to remove Class E airspace for Lone Star, TX. (75 FR 64972) Docket No. FAA–2010–0772. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by removing the Class E airspace extending upward from 700 feet above the surface at the former Lone Star Steel Company Airport, Lone Star, TX. The airport has been abandoned and all SIAPs have been cancelled, therefore, controlled airspace is no longer needed for the safety and management of IFR operations.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at the former Lone Star Steel Company Airport, Lone Star, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASW TX E5 Lone Star, TX [Removed]

Issued in Fort Worth, Texas, on December 15, 2010.

Walter L. Tweedy,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32572 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Final Guides Amendments.

SUMMARY: The Commission announces amendments to the FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries. The amendments in particular provide guidance on how to mark and describe non-deceptively an alloy of platinum and non-precious metals, consisting of at least 500 parts per thousand, but less than 850 parts per thousand, pure platinum and less than 950 parts per thousand total platinum group metals.

DATES: *Effective Date:* December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, (202) 326–3740, Division of Enforcement, Bureau of Consumer Protection, or Janice Podoll Frankle, Attorney, (202) 326–3022, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to public comments and consumer survey evidence submitted in response to two **Federal Register** Notices, the FTC amends the Platinum Group Metals Section (hereinafter "Platinum Section") of the Commission's Guides for the Jewelry, Precious Metals, and Pewter Industries ("Jewelry Guides" or "Guides"), 16 CFR 23.7, and also amends the Scope and Application Section of the Guides, 16 CFR 23.0. The amendments to the Platinum Section provide that marketers may non-deceptively mark and describe "platinum/base metal alloys," those containing at least 500 parts per thousand ("ppt"), but less than 850 ppt, pure platinum and less than 950 ppt total platinum group metals ("PGM") as "platinum" using certain disclosures.[1] In supporting this conclusion, the following **Federal Register** Notice provides background information; summarizes the record established by the public comments; analyzes this record based on the applicable Commission standard; and sets forth the text of the amendments to the Platinum

[1] The Platinum Group Metals are platinum, iridium, palladium, ruthenium, rhodium, and osmium. 16 CFR 23.7(a).

Section and to the Scope and Application Section of the Guides.

I. Background

A. The Platinum Section of the Jewelry Guides

The Commission issued the Jewelry Guides to help marketers avoid making jewelry claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. Industry guides, such as these, are administrative interpretations of the law. Therefore, they do not have the force of law and are not independently enforceable. The Commission can take action under the FTC Act, however, if a business makes marketing claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5 of the FTC Act.[2]

To help marketers avoid unfair or deceptive acts or practices in connection with the sale of platinum, the Platinum Section contains a general statement regarding the deceptive use of the term "platinum" (and the names of other PGM) and provides examples of potentially misleading and non-violative uses of the term "platinum."[3] Specifically, Section 7(a) states:

> It is unfair or deceptive to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium," or any abbreviation to mark or describe all or part of an industry product if such marking or description misrepresents the product's true composition.[4]

Section 7(b) provides three examples of markings or descriptions for products containing platinum that may be misleading.[5] Section 7(c) provides four examples not considered unfair or deceptive.

B. Procedural History

On December 15, 2004, Karat Platinum, a jewelry manufacturer, requested an FTC staff opinion regarding the application of the Platinum Section to a new product consisting of 585 ppt platinum and 415 ppt copper and cobalt (non-precious metals). The request stated that the company believed that the Platinum Section did not prohibit marking or describing the product as "platinum," or address how to mark or describe the product other than to prohibit misrepresentations. The staff responded on February 2, 2005, agreeing that the Guides did not address the marketing of this product, and providing guidance.[6]

Because of the public interest in this issue, the Commission published a **Federal Register** Notice ("2005 FRN")[7] soliciting public comment regarding whether it should revise the Guides to address this new product. The Commission also sought comment regarding whether the Guides should address how to mark or describe non-deceptively platinum-clad, filled, coated, or overlay jewelry products.

Based on the 2005 FRN comments and consumer survey evidence, the Commission issued a **Federal Register** Notice in 2008 ("2008 FRN") soliciting comment on a proposed amendment to the Platinum Section to address these issues. Prior to the close of the comment period on May 27, 2008, the Platinum Guild International ("PGI") and the Jewelers' Vigilance Committee ("JVC") requested a 90-day extension. The Commission extended the comment period until August 25, 2008.[8]

C. The 2005 FRN Comments

The vast majority of the 62 responsive comments[9] recommended that the Commission revise the Platinum Section to include guidance for platinum/base metal alloy jewelry. These commenters further recommended that the Commission provide that marking or describing platinum/base metal alloy jewelry as "platinum" is deceptive. The commenters asserted that platinum jewelry has always been produced as nearly pure or combined with other PGM (hereafter "platinum/PGM"),[10] and that platinum/base metal alloys do not share the same characteristics as these products.[11] Karat Platinum disagreed that the use of the term "platinum" to describe platinum/base metal alloys is deceptive.

The 2005 record included consumer perception studies and product testing. PGI submitted a study it commissioned from Dr. Thomas J. Maronick, ("2005 Platinum Awareness Study"),[12] a 2003 marketing survey conducted by Hall & Partners,[13] and two tests evaluating platinum/base metal alloys.[14] The 2005 Platinum Awareness Study found that 39.5% of consumers believe that products marked or described as "platinum" are pure or nearly pure and that certain qualities or attributes typically associated with platinum are important to a substantial number of consumers.[15] The study also found that a majority of consumers would not expect platinum/base metal alloys containing more than 40% base metal to be called "platinum" if they do not possess the attributes present in higher purity platinum or platinum/other PGM products.[16] In addition, the study showed that the majority of consumers do not fully understand numeric jewelry markings, particularly those using chemical abbreviations, such as 585 Pt./415 Co.Cu. The PGI product tests indicated that certain platinum/base metal alloys are inferior to higher purity platinum jewelry in terms of wear and oxidation resistance, as well as weight loss, and that they cannot be resized using certain procedures.[17] Karat Platinum submitted a test of its alloy which suggested that the alloy is superior or equivalent to higher purity platinum jewelry in several respects, but

---

[2] The Commission is adding two new paragraphs to Section 23.0 to clarify the scope and application of the Jewelry Guides. This does not represent a change in Commission law or policy.

[3] On April 8, 1997 (62 FR 16669), the Commission published the current Platinum Section. The Commission revised this section as part of its most recent comprehensive review of the Guides.

[4] 16 CFR 23.7(a).

[5] These examples provide that it may be misleading: (1) To describe a product with less than 950 ppt pure platinum as "platinum" without qualification; (2) to describe a product with less than 850 ppt, but more than 500 ppt, pure platinum as "platinum" without qualifying the representation with a disclosure identifying the ppt of pure platinum and the ppt of other platinum group metals contained in the product; (3) to use the word "platinum" or any abbreviation to mark or describe any product that contains less than 500 ppt pure platinum. 16 CFR 23.7(b).

[6] The request for a staff opinion and the staff's response to that request are located at *http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum.pdf* and *http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum002.pdf*, respectively. The staff letter stated that "this alloy [is] sufficiently different in composition from products consisting of platinum and other PGM as to require clear and conspicuous disclosure of the differences." The staff letter also explained that it did not appear "that simple stamping of the jewelry's content (*e.g.*, 585 Plat., 0 PGM) would be sufficient to alert consumers to the differences between the Karat Platinum alloy and platinum products containing other PGM."

[7] 70 FR 38834 (July 6, 2005).

[8] 73 FR 22848 (Apr. 28, 2008).

[9] The Commission's summary and analysis of the 2005 FRN comments is detailed in the 2008 FRN, 73 FR 10190 (Feb. 26, 2008). The 62 comments to the 2005 FRN are posted at: *http://www.ftc.gov/os/comments/jewelryplatinum/index.shtm*.

[10] Currently the Guides specifically address the marketing of products containing: (1) At least 85% platinum; or (2) at least 50% and less than 85% platinum, and at least 95% total PGM.

[11] *See, e.g.,* JVC Comment 2005 at 4, 7–8; PGI Comment 2005 at 16–19.

[12] PGI Comment 2005, Attachment A. The Maronick study title is "Platinum Awareness Study: An Empirical Analysis of Consumers' Perceptions of Platinum as an Option in Engagement Ring Settings."

[13] *Id.,* Attachment B.

[14] *Id.* at 3, and Attachments C and D.

[15] *Id.,* Attachment A. These attributes included the product's weight, durability, scratch and tarnish resistance, and whether it was hypoallergenic and could be resized.

[16] Higher purity platinum or platinum/other PGM products include those containing at least 850 ppt platinum, or at least 500 ppt platinum and at least 950 ppt PGM.

[17] It does not appear that the PGI tests evaluated a product identical in composition to the Karat Platinum platinum/base metal alloy.

is less dense than higher purity platinum jewelry. Karat Platinum did not test whether its alloy is hypoallergenic.

Several comments also suggested that the Commission provide guidance on how to describe platinum-clad, filled, plated, or overlay products, but most did not discuss what guidance the Commission should provide.

II. The 2008 FRN and Comments

A. The 2008 FRN

Based on the 2005 FRN record, the Commission issued a 2008 FRN soliciting comment on a proposed revision to the Platinum Section to address the marketing of platinum/base metal alloys.[18] The Commission explained that the record supported the conclusion that a substantial number of consumers believed products marked or described as "platinum" are nearly pure and possess certain desirable qualities that some platinum/base metal alloys may not possess. In addition, the Commission stated that the record indicated that if a description of a platinum/base metal alloy as "platinum" is qualified only with a content disclosure using numbers and chemical abbreviations, consumers likely would not understand the disclosure. However, there was no evidence that a more descriptive disclosure would not adequately qualify the claim. The Commission, therefore, proposed specific qualifying disclosures.[19]

The Commission's proposal provided that marketers may physically mark or stamp a platinum/base metal alloy jewelry article with the product's chemical composition (*e.g.,* 585 Pt./215 Co./200 Cu.), but that when making any other representation that the product contains platinum, marketers should clearly and conspicuously disclose, immediately following the name or description of the product:

(1) That the product contains platinum and other non-platinum group metals;

(2) The product's full composition, by name and not abbreviation, and the percentage of each metal; and

(3) That the product may not have the same attributes or properties as products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.

The proposed amendment also included a substantiation provision that allowed marketers to forgo the third disclosure if they had competent and reliable scientific evidence that, with respect to all attributes material to consumers (*e.g.,* the product's durability, hypoallergenicity, resistance to tarnishing and scratching, and the ability to resize or repair the product), their product is equivalent to products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM.

In the 2008 FRN, the Commission again sought comment whether it should revise the Platinum Section to address platinum-clad, filled, plated, or overlay products and, if so, how.

B. Summary of the Comments

In response, the Commission received 58 comments.[20] Most were short without detailed discussion. However, Karat Platinum; JVC, on behalf of several industry associations; [21] and PGI submitted detailed comments. The JVC and PGI comments included survey evidence.

We summarize the comments and survey evidence below addressing: (1) Use of the word "platinum" to describe platinum/base metal alloys; (2) the Commission's proposed disclosures; (3) harmonization with international standards; (4) the commenters' proposed amendments to the Guides; and (5) guidance regarding platinum-clad, filled, plated, or overlay jewelry.

1. Use of the Word "Platinum"

Many commenters asserted that use of the term "platinum" to describe a platinum/base metal alloy would deceive consumers in a manner that could not be remedied with disclosures.[22] Most made this assertion without supporting evidence. JVC and PGI, however, relied on the findings from PGI's 2005 Platinum Awareness Study and provided 2008 survey evidence ("2008 Platinum Attitude Study").[23] Specifically, PGI pointed to the 2008 survey's findings that consumers expect products marked or described as "platinum" to be nearly pure and that products with "platinum," in their name, such as "Karat Platinum," "Platinum Five," or "Platinum V," confuse or mislead consumers concerning the products' metal content and attributes.[24] PGI argued that because of these perceptions, it is inherently misleading to refer to platinum/base metal alloys as "platinum," and the deception cannot be cured by qualifying language.[25] Therefore, JVC and PGI asserted that marketers should describe platinum/base metal alloys using a name that does not include "platinum" or "plat," so consumers will not be confused or misled about the alloy's contents or attributes.[26] Tiffany & Co. ("Tiffany") agreed, suggesting that platinum/base metal alloys should be "creatively and individually named by the manufacturer." [27] Several other commenters recommended that the FTC "consider a new and different name" for the alloy but did not propose a particular name.[28]

Karat Platinum disagreed, arguing that the term "platinum" can be qualified sufficiently so that consumers understand that a product is not pure platinum.[29] Karat Platinum, however, did not submit any survey evidence.

2. The Commission's Proposed Disclosures

JVC and PGI asserted that the Commission's three proposed disclosures were confusing, inadequate,

[18] 73 FR 10190 (Feb. 26, 2008).

[19] *Id.* at 10196–10197.

[20] The 58 comments can be found at: *http://www.ftc.gov/os/comments/jewelryplatinum2/index.shtm.*

[21] JVC submitted its comment on behalf of JVC, the Manufacturing Jewelers and Suppliers of America, the Jewelers of America, and the American Gem Society.

[22] *See* JVC Comment at 2; PGI Comment at 2–3.

[23] Dr. Thomas J. Maronick conducted both studies. The title of the 2008 Attitude Study is: "Platinum Attitude Study: Four Empirical Studies of Consumers' Attitudes Toward Platinum and Substitutes as Options in Engagement Ring Settings."

[24] PGI Comment at 10–11. PGI's consumer surveys asked consumers whether they would expect products described with these terms to possess the attributes of higher purity platinum/other PGM products. PGI Comment, Attachment A, 2008 Platinum Attitude Study 2 at 1–4. The survey found: Karat Platinum: Definitely Yes, 18%; Probably Yes, 42%; Maybe, 21%; Platinum Alloy: Definitely Yes, 6%; Probably Yes, 18%; Maybe, 24%; Platinum Five: Definitely Yes, 8%; Probably Yes, 23%; Maybe, 36%; Platinum V: Definitely Yes, 8%; Probably Yes, 25%; Maybe, 33%; Platifina: Definitely Yes, 3%; Probably Yes, 8%; Maybe, 22%; Palarium: Definitely Yes, 4%; Probably Yes, 8%; Maybe, 19%.

[25] PGI Comment at 3. *See also* Tiffany & Co. Comment (stating that consumers expect a product labeled "platinum" to contain an industry standard metal of 500 ppt pure platinum with 950 total PGM); Lowell Kwiat Comment (explaining that today's platinum is generally 95% pure); Gaetano Cavalieri Comment (noting that the industry standard practice for generations has restricted platinum to alloys containing no fewer than 850 ppt pure platinum); Richard Frank Comment (commenting that platinum has traditionally been 90% platinum, 10% iridium); William Holland Comment (noting that platinum jewelry has always been known to be 90% pure or higher); Joseph Klein Comment (platinum was never less than 85% pure under any definition); Charles Wallace Comment ("[p]latinum has forever been sold as an item of purity and should remain so.").

[26] *See* PGI Comment at 2, 12, 26–28, 34–35; JVC Comment at 2–3, 6–7, 14, 18.

[27] Tiffany Comment at 3. Kwiat agreed, stating that marketers should call consumers' attention to this "new innovation" by giving it "a different name which reflects the fact that it is different than what has been customary." Lowell Kwiat Comment at 2.

[28] *See, e.g.,* Birks & Mayors, Inc. Comment; Ben Bridge Jeweler Comment; Joseph Cresalia Comment.

[29] Karat Platinum Comment at 6–8.

and unworkable. Karat Platinum disagreed, but suggested some revisions to the third disclosure and asserted that marketers of higher purity platinum or platinum/PGM jewelry should be subject to the proposed second and third disclosures. Below, we discuss the three proposed disclosures.

(a) First Proposed Disclosure

The first proposed disclosure provided that marketers of platinum/base metal alloys state that their product "contains platinum and other non-platinum group metals." Several commenters argued that this disclosure will confuse consumers. For example, 54% of consumers surveyed in the 2008 Platinum Attitude Study did not know what the phrase "other non-platinum group metals" meant.[30] PGI further stated that when the survey asked consumers to classify metals as platinum or non-platinum group, they were largely unable to do so correctly.[31] Karat Platinum, by contrast, commented that this disclosure would provide useful information to consumers about the product.[32]

(b) Second Proposed Disclosure

The Commission's second proposed disclosure provided that marketers list the full composition of the product (by name and not abbreviation) and the percentage of each metal. JVC and PGI asserted that consumers will not comprehend this disclosure. In support of this position, JVC cited the 2008 Platinum Attitude Study. Specifically, when consumers were asked whether they understood the meaning of "58.5% Platinum and 41.5% Copper/Cobalt," 55% said yes, 33% stated that they did not know, and 12% stated that they were not sure.[33] Moreover, JVC opined that because consumers will not understand the disclosure, they will focus only on the term "platinum" and believe that the product is the equivalent of platinum products that are at least 85% platinum.[34] PGI added that listing the percentages of each metal still may not alert consumers of the differences between "diluted" platinum alloys and higher purity products.[35]

Tiffany agreed and asserted that disclosing each alloying component in full without abbreviation would not achieve consumer knowledge. Tiffany noted that research has shown that consumers do not understand metal content disclosures. Thus, it contended that "disclosing that the 'platinum' piece has a certain percentage of copper * * * is not instructive."[36]

In contrast, Karat Platinum asserted that disclosing the composition of platinum/base metal alloys using the full names and percentages of the constituent metals is a good practice.[37] It explained that the Commission's proposed disclosures—that the product contains platinum and other non-platinum group metals and the full names and percentage of the metals—"provides the greatest likelihood of effectively conveying information to consumers."[38] However, it noted that marketers of "high grade and platinum/PGM" do not have to disclose their products' full composition.[39] Karat Platinum asserted that the Commission should remedy this inconsistency and modify the second proposed disclosure to provide that all marketers of platinum products make full compositional disclosures.[40]

Karat Platinum opined that full compositional disclosure for all platinum products would benefit consumers in at least two ways. First, it asserted that it is a "myth" that platinum/PGM products are composed of an industry-standard material. It noted that high-grade platinum products may have "dramatically different" characteristics. For example, it compared two platinum rings, one containing 95% platinum and 5% ruthenium with another containing 95% platinum and 5% iridium. It stated that the former product is "significantly more scratch resistant and durable."[41] Second, Karat Platinum explained that certain marketers "have engaged in the long-standing practice of characterizing high-grade and platinum/PGM alloys as 'pure' platinum" when the products all contain less than 100% platinum.[42] Karat Platinum, however, did not submit any consumer perception evidence indicating that the current marketing for higher purity platinum/other PGM products misleads consumers.

(c) Third Proposed Disclosure

The Commission's third proposed disclosure provided that marketers disclose "that the product may not have the same attributes as products containing at least 850 parts per thousand pure Platinum, or at least 500 parts per thousand pure Platinum and at least 950 parts per thousand PGM."[43] The proposed amendment further provided that a marketer need not make this third disclosure "if the marketer has competent and reliable scientific evidence that, with respect to all attributes material to consumers * * * such product is equivalent to [higher purity platinum/other PGM] products." Many commenters asserted that this disclosure is confusing and unworkable.

(i) The Disclosure Is Confusing

Several commenters asserted that the third disclosure is confusing because it does not require that marketers specify the attributes of platinum/base metal alloys that differ from platinum/PGM products or explain how the alloy differs with respect to these attributes. The 2008 Platinum Attitude Study asked consumers about eight separate product attributes of platinum/base metal engagement rings: durability, luster, density, scratch resistance, tarnish resistance, ability to be resized or repaired, hypoallergenicity, and the retention of precious metal content over time. From 40% to 80% of consumers surveyed (depending on the product property) would expect a salesperson to inform them about these attributes and would also want the information physically attached to the product.[44] JVC asserted that these results demonstrate that the proposed disclosure "will not impart any of the information consumers want and need."[45] The 2008 survey, however, did not evaluate consumer understanding of the third proposed disclosure.

JVC asserted that "[t]o make this disclosure fair and complete, full disclosure about each of the eight important attributes * * * would be required."[46] JVC explained: "[a] consumer could easily purchase a [platinum/base metal alloy] ring without

[30] PGI Comment, Attachment A, 2008 Platinum Attitude Study 4 at 1–2. In addition, 26% stated they were not sure what "other non-platinum group metals" were.

[31] *Id.* at 2. Respondents were asked whether they understood the phrase "other non-platinum group metals" and then were given a list of metals and asked if any of them were "other non-platinum group metals." In response to the follow-up, 29% of respondents stated that palladium was an "other non-platinum group metal;" 61% said they were not sure; and 11% said no. Palladium is a platinum group metal. Similarly, 39% stated copper was an "other non-platinum group metal;" 47% stated they were not sure; and 13% said no. Copper is a non-platinum group metal. *Id.*

[32] *See* Karat Platinum Comment at 6.

[33] *See* JVC Comment at 8. *See* PGI Comment, Attachment A, 2008 Platinum Attitude Study 3 at 2. By contrast, when asked if consumers knew what 585Pt.415Co.Cu. meant 81% said no, 13% said yes, and 7% said they were not sure. *Id.* at 1.

[34] JVC Comment at 8.

[35] PGI Comment at 4.

[36] Tiffany Comment at 2.

[37] Karat Platinum Comment at 6.

[38] *Id.*

[39] *Id.*

[40] Karat Platinum Comment at 6–7.

[41] *Id.* at 6.

[42] *Id.* at 7.

[43] 73 FR 10190, 10197.

[44] PGI Comment, Attachment A, 2008 Platinum Attitude Study 1 at 3.

[45] JVC Comment at 11.

[46] *Id.*

understanding that it might not hold a diamond as well, or might tarnish, or may not be hypoallergenic."[47] Other commenters expressed similar concerns.[48]

Tiffany, for example, explained that "[o]ur experience has shown that consumers who are in the process of buying a platinum product, feel as though they understand the product's makeup (platinum is pure) and characteristics (hypoallergenicity and others) and are there (typically in a rush) to decide based on issues such as style and fit, not a chemistry discussion of alloy makeup."[49] Tiffany opined that this disclosure, combined with the second, full composition disclosure, will baffle and frustrate consumers, potentially causing them to walk away from the sale.

(ii) The Disclosure Is Unworkable

The comments further asserted that marketers cannot realistically deliver the third proposed disclosure. Specifically, JVC and PGI contended that the 2008 Platinum Attitude Study found that consumers expect jewelry information to be physically attached to the product.[50] However, both JVC and PGI asserted that the volume of information included in the disclosure, combined with the first and second proposed disclosures, cannot be attached to the jewelry itself, or on a small tag affixed to the jewelry.[51] JVC further stated that if the third proposed disclosure is revised to include additional information necessary to fully inform consumers, this additional information will make attachment to jewelry more difficult.[52] Therefore, JVC noted, jewelry sales personnel will need to orally disclose the information, or provide it in writing with the purchase.

Several commenters asserted that reliance on the salesperson or on written information delivered with the purchase is problematic. JVC opined that the average jewelry salesperson would be hard pressed to deliver this information.[53] It further asserted that the jewelry retail sales force is not equipped to discuss this complex metallurgical disclosure and simply will not provide the information, or will provide incorrect information.[54] PGI noted that it would be difficult, if not impossible, to ensure that the sales personnel impart correct information comparing all of the differences between a multitude of new alloys.[55]

In addition, JVC submitted a Jewelers of America ("JA") study that asked JA members about the "realities" of selling jewelry. The JA study, in part, found that 57.4% of the respondents said that it would be "difficult" or "very difficult" to tell consumers that the jewelry may not have the attributes of higher purity platinum products and to explain those differences.[56] JVC asserted that such technical disclosures—spoken or written—at the point of sale are likely to have a "chilling" effect and that consumers "may very well walk away from any product that requires these confusing, lengthy and unappealing disclosures."[57]

Moreover, JVC explained that nearly half of the respondents to the JA study stated that attribute disclosures could not be attached to the jewelry in the form of a tag or other physical means.[58] Several commenters concurred, asserting that without physical attachment, the disclosures likely will not remain with the jewelry product over time. JVC explained that the jewelry could be re-sold, repaired, or appraised without any identification of the alloy.[59] It asserted that a jeweler repairing a platinum/base metal alloy might not know the contents and this could create the risk that the item will be damaged during the repair process. A jewelry repair dealer expressed similar concern, explaining: "it will be virtually impossible for any jewelry repair technician to properly repair or size * * * jewelry under the new proposal."[60] Another commenter opined that, short of an assay of the jewelry piece, the platinum/base alloy product distinctions "will not be discernible even to the well trained professional."[61]

In contrast, Karat Platinum asserted that the proposed disclosures do not need to include more detailed information or be physically attached to the platinum/base metal alloy products. It suggested that marketers' inclusion of the proposed disclosures with the marketing materials "is more than sufficient to ensure that the information is available to consumers."[62] It further opined that, by making marketing material available, consumers are "provided with sufficient information to put them in a position to inquire from their jewelers, or from other knowledgeable sources, such as a company's marketing information, Web site, or the Internet, as to the relative value, properties, and characteristics of a product."[63] Similarly, another commenter stated that the point of sale is the ideal way to inform consumers of the platinum/base metal alloy content.[64]

(d) The Substantiation Provision

Many commenters asserted that the substantiation provision that allows marketers to avoid making the third disclosure is inadequate and unworkable because it is too vague and gives marketers too much discretion. JVC and PGI explained that, even though the proposed amendment lists five important attributes as examples,[65] the seller self-determines which product attributes are material.[66] JVC asserted that a disclosure that relies on a subjective standard presents endless possibilities for non-compliance.[67] Moreover, JVC explained that because "there are no industry-wide, universally-accepted testing methods that produce 'competent and reliable' evidence," there is no standard for testing these attributes.[68] PGI similarly noted that marketers are inappropriately left to their own devices to "cherry pick" which tests they should conduct to self-determine that they are exempt from making a particular disclosure.[69]

Karat Platinum raised three concerns with the adequacy of the platinum attributes listed in the provision. First, it explained that the five attributes listed in the provision do not include all the attributes that the 2005 Platinum Awareness Study identified as important to the greatest number of consumers.[70] For example, in that study a substantial majority of consumers indicated they would want to know the weight of a product setting, yet that

[47] *Id.* at 10–11.

[48] *See, e.g.,* Anne Howitt Comment; Michael Kranish Comment.

[49] Tiffany Comment at 4.

[50] JVC Comment at 12; PGI Comment at 11.

[51] JVC Comment at 11–12; PGI Comment at 4.

[52] JVC Comment at 12–13.

[53] *Id.* Similarly, a jeweler commented that it is unrealistic for the public to depend on retail sales personnel to accurately disclose and explain the differences between platinum/PGM products and the platinum/base metal alloy. This jeweler stated that the reality of the marketplace is that sales personnel are unlikely to explain jewelry specifications unless they are specifically asked. Lowell Kwiat Comment at 1.

[54] JVC Comment at 12.

[55] PGI Comment at 4.

[56] JVC Comment at 12–13; Attachment Six A.

[57] *Id.* at 13.

[58] *Id.* at 12–13.

[59] *Id.* at 13.

[60] Steven DiFranco Comment. *See also* Anne Howitt Comment; Peter LeCody Comment.

[61] Lowell Kwiat Comment at 1.

[62] Karat Platinum Comment at 5.

[63] *Id.*

[64] Hoover & Strong Comment. Hoover & Strong is a wholesale jewelry manufacturer.

[65] The five attributes in the proposed amendment are: durability, hypoallergenicity, resistance to tarnishing, resistance to scratching, and the ability to re-size or repair the product.

[66] JVC Comment at 9; PGI Comment at 4.

[67] JVC Comment at 9.

[68] *Id.*

[69] PGI Comment at 4.

[70] Karat Platinum Comment at 4.

characteristic was not included explicitly in the third proposed disclosure. Second, Karat Platinum noted that because Dr. Maronick pre-selected the attributes, the participants had no choice in deciding which characteristics were important. Third, it asserted that when participants were allowed to write in the characteristics important to them they "indicated that they would want to know 'everything' about the platinum product."[71] Thus, Karat Platinum recommended the Commission "conduct independent fact finding to determine what properties are material to consumers."[72]

In addition, Karat Platinum contended that the Commission should provide that all marketers of platinum products—not just those marketing platinum/base metal alloys—"maintain evidence that their product meets those expectations," or alert consumers that they do not.[73]

3. Harmonization with International Standards

JVC, PGI, and numerous other commenters asserted that the Commission's proposal is not in harmony with international standards and will impede foreign commerce.[74] JVC explained that products made of platinum/base metal alloys cannot be sold as "platinum" in foreign jurisdictions that have adopted standards promulgated by the International Organization for Standardization ("ISO") or the World Jewellery Confederation ("CIBJO").[75] Moreover, JVC noted that platinum/base metal alloys could not be sold as "platinum" products in "hallmarking" countries—those that require that precious metal jewelry (including platinum) be stamped by approved assaying guilds before they are sold—because they contain base metals.[76] Thus, JVC opined that if platinum/base metal alloy products are marketed as "platinum" in the U.S., it "will undermine the international perception of U.S.-made products, threatening the integrity of the entire U.S.-platinum jewelry market abroad."[77] Tiffany agreed, noting that the FTC should not take actions to place manufacturers in a situation where their products are not salable overseas.[78]

4. Other Suggestions Regarding the Commission's Proposed Amendments

JVC proposed that the Commission amend the Guides to provide that marketers cannot describe any product containing more than 5% non-platinum group metal as "platinum."[79] JVC also proposed revising the Guides to state that certain practices are unfair or deceptive instead of stating that they may be misleading. Karat Platinum suggested that the provision in the Commission's proposed amendment allowing marketers to physically stamp platinum/base metal alloys with their chemical composition and the substantiation provision be included in section 23.7(c) of the Platinum Section, instead of section 23.7(b).[80] Because section 23.7(c) discusses markings that the Commission would not consider misleading, Karat Platinum explained that the amendment permitting physical stamping is more appropriate in that section.

5. Platinum-Clad, Filled, Plated, or Overlay Products

In its 2008 FRN, the Commission also solicited comments concerning whether it should amend the Platinum Section to address other products that contain platinum, such as platinum-clad, filled, plated, coated, or overlay products, which the Guides currently do not address. The Commission received several comments in response. Most did not recommend specific guidance, but asserted that, if the Commission amends the Guides to provide that platinum/base metal alloy products should be described with a "non-platinum" descriptor, then such "descriptors should also apply to plated, filled, rolled, and any other form that is not complete or near complete of platinum content."[81]

JVC commented that the Commission should provide "standards" regarding the thickness of the plating to ensure durability—similar to those set for gold—to protect consumers against deceptive practices.[82] Its proposed provision stated that surface-plating with platinum should be composed of at least 950 ppt platinum and specified a minimum thickness of .125 microns of platinum electroplate and .5 microns for heavy electroplate. JVC's proposal also provided that, if the plating is of at least 950 ppt platinum, but does not meet the minimum thickness, then the product should be described as "platinum-flashed" or "platinum-washed." The proposal also stated that certain descriptions may be misleading: "overlay," "filled," "clad," "rolled-plate," "covered," or "coated."[83] However, JVC did not provide evidence that consumers are being, or are likely to be, deceived by any current marketing for platinum-plated jewelry or evidence that JVC's proposed terms would not mislead consumers.

III. Analysis

Based on the complete record, the Commission amends the Guides to address the marketing of products containing platinum/base metal alloys. The purpose of the Jewelry Guides is to help marketers avoid deceptive or unfair conduct.[84] The record demonstrates that deception will likely result if marketers describe platinum/base metal alloys as "platinum" without disclosing additional information. The record, however, does not show that the qualified use of the term "platinum" would be deceptive. Moreover, the record furnishes sufficient evidence for the Commission to provide guidance on qualifying disclosures.

Thus, the Commission concludes that it should amend the Guides to state that marketers may describe platinum/base metal alloys as "platinum" with appropriate disclosures. Amending the Guides in this manner is superior to the other available options: (1) Amending the Guides to state that marketers should not describe such products as "platinum," or (2) not addressing the issue in the Guides at all.

Commenters, however, raised several concerns about the disclosures the Commission proposed in its 2008 FRN. The Commission has considered these comments and addresses them below, either revising its previous proposal or explaining why the record does not

[71] *Id.* at 5.

[72] *Id.*

[73] *Id.*

[74] *See, e.g.,* JVC Comment at 14–18; PGI Comment at 5, 18–20; Ben Bridge Jeweler Comment; Birks & Mayors Comment; Gaetano Cavalieri Comment at 1–3; Joseph Cresalia Comment; Shannon Daly Comment; Tiffany Comment at 1–2; Anne Howitt Comment; Norie Jenkins Comment; Annette Kinzie Comment; Robert McGee Comment; Mark Noelke Comment; Elizabeth Parker Comment; M. Strutz Comment; Craig Warburton Comment.

[75] JVC Comment at 14–18. JVC explained that the ISO and CIBJO standards restrict the use of the word "platinum" to platinum/PGM alloys. *Id.* at 16–17.

[76] JVC explained that England, France, Germany, and Switzerland are hallmarking countries. *Id.* at 15, n.22.

[77] *Id.* at 18.

[78] Tiffany Comment at 1.

[79] JVC Comment at 2–3, Attachment One at 2.

[80] Karat Platinum Comment at 3–4.

[81] Michelle Broyles Comment; Don Broyles Comment; Walter Hardin Comment; Vickie Martin Comment; Robert Pate Comment; Randall Sims Comment.

[82] JVC Comment at 26–27. JVC commented that because there is no indication that marketers are selling platinum-filled or platinum-clad items, the Guides do not need to address those products. *Id.*

[83] *Id.* Attachment Three, which contains a comment by Michael A. Akkaoui from Tanury Industries, regarding platinum plating, is in accord with JVC's comment.

[84] *See* 16 CFR 1.5. The purpose of the Guides is to prevent deception, not to codify the rules set by standard setting bodies. *See id.* §§ 1.5–1.6.

support revision. Finally, the Commission declines to amend the Guides to address the marketing of products with platinum plating or coatings at this time.

A. The Record Shows That Deception Will Likely Result if Marketers Describe Platinum/Base Metal Alloys as "Platinum" Without Qualification

In 2005, the Commission found that deception would likely result if marketers describe platinum/base metal alloys as "platinum" without disclosing information regarding their composition and attributes.[85] The 2008 comments do not dispute this finding.[86] In fact, newly submitted consumer perception data further supports this conclusion.

Specifically, the 2008 Platinum Attitude Study, like the 2005 Platinum Awareness Study, shows that most consumers expect products described as "platinum" to contain a high percentage of platinum. Fifty-nine percent (59%) of the consumers surveyed expect a product described as "platinum" to contain at least 80% pure platinum and 69% expect at least 75% pure platinum.[87] The new data also show that many consumers expect products described using names that include the word "platinum," or the root "plat," to have the same attributes as products traditionally marketed as "platinum" to consumers in the United States.[88] For example, 60% of those surveyed expect that a product described as "Karat Platinum" would definitely or probably have the same attributes as "platinum;" and 24% expect that even a product described as "Platinum Alloy" would definitely or probably have the same attributes as platinum.[89]

These expectations, however, will often not be met with products made from platinum/base metal alloys. Specifically, PGI's 2005 testing indicates that certain platinum/base metal alloys are inferior to platinum/PGM products in terms of wear and oxidation resistance, as well as weight loss, and that they cannot be resized using certain procedures.[90] Moreover, Karat Platinum's 2005 testing shows that its platinum/base metal alloy is less dense than platinum/PGM products.[91] Therefore, describing such products as "platinum" without qualification is likely to result in deception regarding their purity and attributes.

B. The Record Does Not Support Amending the Guides To State That Using the Term "Platinum" To Describe Platinum/Base Metal Alloys Is Necessarily Deceptive

As noted earlier, JVC, PGI, and numerous retailers opposed amending the Guides to state that marketers of platinum/base metal alloys may describe them as "platinum" in a qualified manner. These commenters contended that marketers cannot describe such alloys as "platinum" without deceiving consumers no matter what information they disclose. Accordingly, they recommended that the Commission amend the Guides to state that marketers should not describe such alloys as "platinum."[92]

In evaluating whether a representation is misleading the Commission examines not only the claim itself, but the net impression of the entire advertisement.[93] Thus, in order to state that marketers should never describe platinum/base metal alloys as "platinum," the Commission would have to conclude that no reasonable qualification is sufficient to render the term non-deceptive. The record, however, does not support this position. The 2008 Platinum Attitude Study suggests that a clear majority of consumers (55%) understood the proposed full name and percentage content disclosure.[94] In contrast, only 13% of consumers said they understood disclosures using abbreviations.[95]

Moreover, the study likely understates the effectiveness of the proposed full name and percentage content disclosure for several reasons. First, this disclosure is designed to work in tandem with the third proposed disclosure (that the product may not have all the attributes of platinum/PGM), and the study did not test the third disclosure, either alone or in conjunction with the full name and percentage content disclosure. Second, some consumers who stated that they did not understand the disclosure may have understood that the item contained 58.5% platinum but found the phrase "41.5% Copper/Cobalt," which did not disclose the percentage of each metal, confusing. Third, as discussed in section III.C.2 below, consumer perception data regarding gold jewelry shows that the proposed full name and percentage content disclosure likely would be even more effective than the above figures suggest. On its face, this second disclosure appears to be clear, and the record lacks any evidence to the contrary.

Finally, guidance stating that marketers cannot describe platinum/base metal alloys using the term "platinum" would deprive consumers of truthful information, specifically that those products are primarily comprised of platinum.[96]

C. The Record Demonstrates That Disclosure Is the Appropriate Means for Attempting To Prevent Deception

Having determined that describing platinum/base metal alloys as "platinum" without qualification will likely lead to deception, and that the record does not show that the qualified use of the term "platinum" would be deceptive, the Commission concludes that disclosures are the appropriate means for attempting to prevent deception. Because the comments and new consumer perception evidence

[85] *See* 73 FR 10190, 10192–10194 for a detailed summary of the 2005 FRN comments.

[86] *See, e.g.,* PGI Comment at 1–2; JVC Comment at 5; Karat Platinum Comment at 2.

[87] PGI Comment, Attachment A, 2008 Platinum Attitude Study at 5 (these percentages are cumulative).

[88] PGI identified the four most commonly used platinum alloys in the United States: 90% Platinum/10% Iridium; 95% Platinum/5% Iridium; 95% Platinum/5% Cobalt; and 95% Platinum/5% Ruthenium. Maerz, Jurgen J., "Platinum Durability vs. Scratching," posted at *http://www.platinumguild.com/files/pdf/V6N8W_platinum_durability.pdf.* All four alloys have at least 90% platinum. Several comments explained that platinum jewelry generally or traditionally has had at least 85%, 90%, or 95% platinum. *See supra* note 24.

[89] PGI Comment, Attachment A, 2008 Platinum Attitude Study 2 at 1–4.

[90] PGI Comment 2005, Attachments C and D. It does not appear that the PGI tests evaluated a product identical in composition to the Karat Platinum platinum/base metal alloy.

[91] Karat Platinum's testing showed that its alloy is superior to platinum/PGM products in terms of strength, hardness, and casting ability, and that its ability to resist corrosion is equivalent to other platinum products. *See* Karat Platinum Comment 2005 at 2–3.

[92] JVC and PGI acknowledged that a qualified use of the word "platinum" could, in theory, address consumer confusion or deception stemming from the use of the term "platinum" to describe platinum/base metal alloys. Yet, JVC and PGI asserted that it would be impracticable and likely ineffective to make the lengthy, detailed disclosures that they believe marketers would need to make to prevent deception.

[93] Deception Policy Statement, 103 F.T.C. at 179 n.32 (when evaluating representations under a deception analysis, one looks at the complete advertisement and formulates opinions "on the basis of the net general impression conveyed by them and not on isolated excerpts"). Depending on the specific circumstances, qualifying disclosures may or may not cure otherwise deceptive messages or practices. *Id.* at 180–81.

[94] *See* PGI Comment, Attachment A, 2008 Platinum Attitude Study 3 at 1–2. When asked if they understood the meaning of "58.5% Platinum and 41.5% Copper/Cobalt," 55% said yes, 33% stated no, and 12% stated that they were not sure.

[95] *Id.* When asked if they knew what 585Pt; 415CoCu meant, 81% said no, 13% said yes, and 7% said they were not sure.

[96] Advising marketers not to use the term "platinum" to describe platinum/base metal alloys would prevent them from describing a product composed of 84% platinum and 16% copper as "platinum," while competitors could use the term to describe a product composed of only 50% platinum, 45% iridium, and 5% copper.

reinforce the concerns the Commission considered in its 2008 FRN, the following analysis begins with the Commission's proposed three-tiered disclosure regime.

1. The Commission's First Proposed Disclosure

The first proposed disclosure provided that marketers of platinum/base metal alloys disclose that their products "contain platinum and other non-platinum group metals." The 2008 Platinum Attitude Study, however, suggests that few consumers understand this disclosure. Only 20% of those surveyed indicated that they knew what the phrase "other non-platinum group metals" meant.[97] Moreover, many consumers who said either they "knew" or "were not sure of" the disclosure's meaning did not know whether cobalt, copper, palladium, rhodium, and silver are non-platinum group metals (over 60% for cobalt, palladium, and rhodium, and 47% for copper and silver).[98] The Commission, therefore, concludes that this disclosure is unlikely to provide useful information. Accordingly, the adopted amendment excludes this provision.[99]

2. The Commission's Second Proposed Disclosure

The second proposed disclosure provided that marketers of platinum/base metal alloys disclose the product's full composition, by name and not abbreviation, and the percentage of each metal in the product.[100] The consumer perception data suggests that the majority of consumers understand this disclosure. Indeed, 55% of those surveyed indicated that they knew what the phrase "58.5% Platinum and 41.5% Copper/Cobalt" meant.[101] In addition, the "vast majority" of those who indicated either they "knew" or "were not sure" what the disclosure meant correctly identified the platinum and copper/cobalt combination or indicated that the product had a combination of the metals.[102]

Although a substantial minority of consumers surveyed said they did not understand the disclosure, or were not sure what it meant, many of those consumers may have understood that a product with 58.5% platinum is less "pure" than traditional platinum products.[103] Indeed, consumer perception data addressing gold jewelry suggests that this is the case. Specifically, even though many consumers cannot define the term "14 karat gold" accurately, they understand that "14 karat" represents the amount of gold in the product and that 18 karat gold jewelry contains more gold than 14 karat gold jewelry.[104] Similarly it is reasonable to conclude that consumers would understand that a product labeled 58.5% platinum would contain a lower percentage of platinum than a product they expect to have 85% platinum. Therefore, the Commission concludes that the second proposed disclosure is the best option for addressing possible deception regarding the purity of platinum/base metal alloys.

Furthermore, consumer perception data suggests that this type of disclosure would also help prevent deception regarding the attributes of platinum/base metal alloys. Specifically, survey participants were asked whether a ring containing 58.5% Platinum and 41.5% Copper/Cobalt is likely to differ from a platinum ring on eight specific attributes.[105] Depending on the attribute, between 28% and 43% of the respondents indicated the ring would differ from platinum.[106] This data suggests that many consumers exposed to this type of disclosure do not have the impression that platinum/base metal alloys have the same attributes as platinum/PGM products. More than half the consumers surveyed, however, indicated that they "were not sure" or "did not know" whether the product differed from platinum.[107] Therefore, further disclosure is needed to avoid deception.

3. The Commission's Third Proposed Disclosure

The third proposed disclosure advised marketers to state that a platinum/base metal alloy may not have all the attributes that consumers associate with higher purity platinum/PGM products. It also provided that marketers need not make this disclosure if they possess competent and reliable scientific evidence that, with respect to all attributes material to consumers, such product is equivalent to products containing at least 850 ppt pure platinum, or at least 500 ppt pure platinum and at least 950 ppt PGM. The comments filed in 2008 raise six concerns regarding this provision.

First, commenters noted that many consumers do not understand the terms "platinum group metals" or "other non-platinum group metals."[108] As a result, it is likely that these consumers would not fully understand this disclosure. To address this issue, the Commission has revised the disclosure to replace the reference to PGM with the phrase "traditional platinum products."

The most common platinum jewelry currently marketed in the United States contains at least 85% platinum.[109] Consumers, therefore, would reasonably understand that traditional platinum products are those having the attributes of products containing at least 85% platinum. This conclusion is further supported by the 2008 survey and comments from industry demonstrating that consumers expect platinum products to be from 85% to all or almost all pure. The amended Guides,

---

[97] PGI Comment, Attachment A, 2008 Platinum Attitude Study at 16.

[98] *Id.* at 16–17.

[99] The Commission considered revising this provision to state that marketers should disclose that platinum/base metal alloys contain "platinum and other metals" or "base metals." The record, however, does not include any consumer perception evidence suggesting that these disclosures would provide useful information. Furthermore, the second disclosure already provides the metal content of platinum/base metal alloys. More importantly, many platinum/PGM products also contain metals other than platinum, including base metals; therefore, such a disclosure would not likely help consumers distinguish platinum/base metal alloys from such products.

[100] The 2005 Platinum Awareness Study suggests that most consumers do not understand numeric jewelry markings using parts per thousand and chemical abbreviations, such as "585 Pt./415 Co.Cu." PGI Comment 2005, Attachment A, 2005 Platinum Awareness Study at 7–8, 25–26. Indeed, only 7.5% stated they knew what this marking meant, and only 6.9% of those consumers actually understood that the marking described the proportion of platinum and other metals in the jewelry product. *Id.* at 26. The 2008 Platinum Attitude Study suggests that most consumers do not understand chemical abbreviations. Indeed, 81% of those surveyed said they did not know what "585 Pt; 415 CoCu" meant. PGI Comment, Attachment A, 2008 Platinum Attitude Study at 14–15. Of those who said they knew or were not sure, only one correctly responded that it meant "585 parts platinum, 415 parts cobalt/copper." Therefore, keeping the percentage disclosure will assist consumers' understanding of the product's content.

[101] PGI Comment, Attachment A, 2008 Platinum Attitude Study at 14–15. Thirty three percent (33%) stated that they did not know, and 12% stated that they were not sure. *Id.*

[102] *Id.* at 15. The 2008 Platinum Attitude Study did not indicate the number or exact percentage of respondents who responded in this manner, only this characterization.

[103] *Id.* at 14–15; *see also* PGI Comment at 10–11.

[104] PGI Comment 2005, Attachment A, Platinum Awareness Study at 24.

[105] The attributes were durability, luster, density, scratch resistance, tarnish resistance, ability to be resized, hypoallergenicity, and retention of precious metal over time. PGI Comment, Attachment A, 2008 Platinum Attitude Study at 16.

[106] *Id.*

[107] *Id.* Between 47% and 55% of those surveyed indicated they "did not know" or "were not sure" whether the product differed from platinum, depending on the attribute.

[108] JVC Comment at 8; *see also* PGI Comment at 13, 35–36 (The 2008 Platinum Attitude Study revealed that 80% of consumers do not understand the phrase "other non-platinum group metals."); Attachment A, 2008 Platinum Attitude Study at 16–17.

[109] The Commission derived this percentage from the comments and PGI's Web site. *See also supra* notes 25 and 88.

therefore, treat "traditional platinum" as that containing at least 85% pure platinum. This change provides consumers with a short, clear disclosure which is consistent with their current views. Additionally, the new definition provides a more limited universe of comparison, which should help marketers respond to questions precipitated by the disclosure.[110]

Second, several comments suggested that the Commission specify each material attribute identified in the consumer perception data instead of merely listing examples. Adopting this suggestion should provide greater clarity for marketers. Accordingly, the provision now states that marketers need not make this disclosure if they have the required evidence "with respect to the following attributes or properties: durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized or repaired, retention of precious metal over time, and any other attribute or property material to consumers."[111]

Third, Karat Platinum contended that the Commission provides insufficient guidance regarding the evidence needed to substantiate that platinum/base metal alloys have the same material attributes as higher purity platinum products. Specifically, Karat Platinum explained that marketers would not know which higher purity platinum products to which they should compare their products. To support this point, Karat Platinum submitted evidence showing that traditional platinum products can differ from each other with respect to scratch resistance and durability.[112]

Although the record shows that traditional platinum products can differ from each other with respect to certain attributes, these differences may be insignificant to consumers, and the record does not indicate that consumers have been deceived as a result. If some traditional platinum products differ from each other in immaterial ways, it follows that some platinum/base metal alloys may likewise differ from traditional platinum in immaterial ways. The Commission, therefore, concludes that a platinum/base metal alloy marketer need not make the third disclosure to prevent deception if the material attributes of its product do not differ materially from the attributes of any traditional platinum product.

Fourth, JVC argued that only full disclosure of every materially different attribute would prevent deception because consumers want and expect this information.[113] JVC further contended that it would be impractical for marketers to make such disclosures; and therefore, the Commission should amend the Guides to prevent marketers from using the term "platinum" to describe platinum/base metal alloys. The Commission disagrees. The purpose of the Guides is not to maintain uniformly high product standards, but to prevent unfairness and deception.[114] The potential deception here is consumers' assumption that platinum/base metal alloys are as pure as traditional platinum and/or that they have the same attributes as traditional platinum. A clear and conspicuous disclosure of a product's composition and that its attributes may differ from those of traditional platinum addresses this potential deception. If consumers are then interested in how this new product differs from traditional platinum products, they can seek further information before purchasing a jewelry product.[115]

Fifth, some commenters argued that the substantiation proviso is too subjective, and therefore, unworkable.[116] They contended that marketers will differ in their understanding of which attributes are material and the tests they should use to determine differences. They added that no industry-wide, universally-accepted testing methods or standards relating to the attributes of jewelry currently exist.

Neither of these arguments warrants further modifying the proposed proviso. Marketers are responsible for substantiating their claims.[117] In this case, the evidence demonstrates that using the term "platinum" to describe a platinum/base metal alloy conveys the claim that the product has the same attributes as traditional platinum. Marketers, therefore, may make disclosures to dispel this claim, avoid the claim altogether, or obtain competent reliable scientific evidence to substantiate the claim. For marketers seeking to avoid the disclosure and still use the term "platinum" to describe their platinum/base metal alloys, the proviso identifies eight material attributes of jewelry based on the consumer perception data in the record. If additional attributes are, or become, material to consumers, marketers are responsible for determining what those attributes are and obtaining the corresponding substantiation.[118] This places jewelry sellers in no different a position than any other marketer.[119]

Furthermore, the record shows that tests do exist for determining how some material attributes of jewelry products differ from each other. Indeed, both Karat Platinum and PGI submitted tests showing whether, and to what extent, certain material attributes of various platinum/base metal alloys differ from those of platinum/PGM products. Moreover, marketers need not rely on industry-wide, universally-accepted

[110] Instead of comparing attributes to all products containing either at least 85% platinum or at least 50% but less than 85% platinum and at least 95% PGM, platinum/base metal alloys marketers need only compare their products' attributes to any one traditional platinum product.

[111] The last phrase, "and any other attribute or property material to consumers," does not provide the certainty some commenters may desire, but the surveys never asked consumers which attributes they think are material. Instead, the surveys simply provided a list of attributes and asked consumers to comment. Therefore, the record does not demonstrate that the terms provided are comprehensive. Moreover, over time consumers may find additional attributes material. The uncertainty posed by the catch-all phrase, however, puts platinum marketers in no different position than all other marketers in the economy who must substantiate all their material claims.

[112] Karat Platinum cited to PGI data showing that products containing 95% platinum and 5% ruthenium are more durable and scratch resistant than products containing 95% platinum and 5% iridium. The data also showed that both of these products are more durable and scratch resistant than a product containing 100% platinum. Karat Platinum Comment at 2–3.

[113] JVC Comment at 10–11.

[114] 61 FR 27224, 27225 (May 30, 1996). *See also* 16 CFR 1.5.

[115] The Commission followed a similar approach in 1997 when it revised the Guides to provide that fully disclosing the content of platinum/PGM products that contain less than 85% platinum would be sufficient to avoid deception. The Commission reasoned that "[a]n informative marking or description will put consumers on notice that the product contains certain precious metals, thereby putting them in a position to inquire of the jeweler as to the relative value of the different metals and the overall value of the product." 62 FR 16669, 16673 (Apr. 8, 1997). Other Commission Guides and Rules similarly prevent deception by providing that marketers disclose enough information for consumers to make an informed choice or to seek the information needed to do so. *See, e.g.,* Section 260.7(d) of the Guides for the Use of Environmental Marketing Claims (Example 4), 16 CFR 260.7(d); Section 424.1 of the Retail Food Store Advertising and Marketing Practices Rule, 16 CFR 424.1.

[116] JVC Comment at 5–6, 9; PGI Comment at 4, 17.

[117] The law requires marketers to have substantiation for their claims. *See Telebrands Corp.,* 140 F.T.C. 278, 342 (2005), *aff'd,* 57 F.3d 354 (4th Cir. 2006); FTC Policy Statement Regarding Advertising Substantiation, Appendix to *Thompson Medical Co.,* 104 F.T.C. 648, 839 (1984).

[118] The provision does not specify every material attribute or the type of scientific substantiation necessary to avoid making the disclosure, although it does identify material attributes that seem likely to remain material over the long term. Because we may discover that consumers find other attributes material now or in the future, and the nature of the substantiation may change over time, the Commission believes that flexible guidance is appropriate and that members of the jewelry industry are well-positioned to comply with such guidance.

[119] *See* Sears, Roebuck & Co., 95 F.T.C. 406, 511 (1980), *aff'd,* 676 F.2d 385 (9th Cir. 1982) (finding that an advertiser is responsible for all claims, express and implied, that are reasonably conveyed by the advertisement).

tests or standards, so long as they have competent and reliable scientific evidence.[120] Indeed, marketers frequently develop evidence to substantiate their claims even in the absence of industry-wide, universally-accepted tests or standards.[121] The challenges in developing such evidence cited by commenters are not unique to the jewelry industry and do not warrant further modification of the proviso.

Finally, some commenters contended that the third proposed disclosure would present endless possibilities for non-compliance and enforcement would be hopelessly difficult.[122] The Commission issues guidance to help those marketers who are trying to comply with the law, not for those who are intent on violating it. The Guides themselves, however, are not independently enforceable. Therefore, the Commission would have to bring any enforcement action under Section 5 of the FTC Act and prove that a marketer lacked substantiation for its claims, regardless of what the Guides provided.

D. Commenters' General Objections to the Disclosure Provisions Do Not Justify Further Modification

The comments filed in 2008 raise four general objections to the proposed amendment, none of which warrant modifications. First, commenters contended that the proposed disclosures are unworkable because: Consumers will not read lengthy, technical written disclosures; the average jewelry sales personnel lack the expertise to make oral disclosures effectively; and the disclosures will likely have a chilling effect on sales.[123]

These objections are not persuasive. With regard to written disclosures, there is no evidence in the record indicating that consumers will not read written disclosures regarding a platinum/base metal alloy's composition and a simple statement that it may differ from traditional platinum. Moreover, the Commission has reduced the size of the proposed disclosures by eliminating the first proposed disclosure, and has simplified the language in the third proposed disclosure. These changes make the disclosures shorter and non-technical, and therefore, easier to comprehend. Additionally, the 2008 Platinum Attitude Study suggests that most consumers can read and understand disclosures regarding the composition of jewelry using the full name and percentage of each metal.

With regard to the inability of sales personnel to make oral disclosures, the record includes the JA e-mail survey showing that 52.5% of the retailers surveyed would find it "difficult" or very "difficult" to make the disclosures orally. Sales clerks, however, need not make any disclosure if marketers clearly and conspicuously make the written disclosures provided in the amended Guides. Moreover, simply because making a disclosure is difficult does not mean that it cannot reasonably be done.[124]

With regard to any chilling effect disclosure may have on sales, no commenter has a larger stake in robust sales of platinum/base metal alloy products than Karat Platinum. Yet Karat Platinum, an entity that would be responsible for making the disclosures, indicated that the disclosures are workable and does not object to them. The Commission, therefore, finds this argument unpersuasive.

Second, many commenters objected to the proposed amendment because it conflicts with international standards. As the Commission explained in its 2008 FRN, however, this is not a basis for rejecting the amendment. Although the Commission generally prefers to harmonize its guidance with international laws and standards, Commission Guides must be based upon deception or unfairness.[125] The commenters base their argument on conflicts between the Commission's proposed amendment and ISO and CIBJO standards. These standards, however, are technical industry standards developed through a consensus-building process based on a variety of considerations—such as facilitating trade and promoting international cooperation—and not solely upon deception.[126] Harmonization with international standards is typically favored. Where, as here, however, there is insufficient evidence that a particular claim (*i.e.,* a qualified platinum representation) is deceptive, the Commission cannot promulgate a guide stating that marketers should not make the representation solely to achieve harmony.[127]

Third, some commenters argued that any written disclosure regarding the composition of platinum/base metal alloy jewelry would likely become separated from the jewelry over time.[128] They contended that, as a result, jewelers could not effectively appraise, resize, or repair the jewelry at a later time. However, the commenters' proposed solution, amending the Guides to state that marketers should not describe platinum/base metal alloys as "platinum," fails to resolve this problem. Specifically, describing such alloys as something other than "platinum" at the time of purchase does not insure that jewelers would have the information necessary to identify, value, resize, or repair the jewelry in the future.

Physically stamping or marking jewelry to indicate its composition would address this concern. The Guides currently do not require stamping, and there is no evidence that such a requirement is necessary in this case. In fact, Karat Platinum already marks its products with composition information.[129] However, the Commission amends Section 23.7(c) of

[120] "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. *See* Guides for the Use of Environmental Marketing Claims, 16 CFR 260.5; and *Telebrands Corp.,* 140 F.T.C. 278, 347 (2005), *aff'd,* 57 F.3d 354 (4th Cir. 2006). In the absence of industry-wide, universally accepted tests, marketers can rely on tests conducted and evaluated objectively using procedures generally accepted by professionals in the area.

[121] *See, e.g.,* Mohawk Petition, 74 FR 13099, 13102–13103 (Mar. 26, 2009).

[122] JVC Comment at 9, 14; PGI Comment at 2, 4, 17–18.

[123] *See, e.g.,* JVC Comment at 12–13; PGI Comment at 15–16, 23; Lowell Kwiat Comment at 1; Tiffany Comment at 4.

[124] Presumably marketers are already accustomed to answering questions about the differences between the jewelry products they sell and competing products. If marketers can explain the difference between jewelry made from platinum/PGM, gold, or platinum/base metal alloys not currently described as platinum, for example, they should be able to explain the differences between platinum/PGM products and platinum/base metal alloys described as platinum. In fact, the JA e-mail survey also showed that 23.1% of the retailers surveyed would find it "easy" or "very easy" to make the disclosures orally (the remaining 24% responded "not sure" or did not answer the question).

[125] The Trade Agreements Act of 1979 states that no Federal agency "may engage in standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States and that Federal agencies must, in developing standards take into consideration international standards and shall, if appropriate, base the standards on international standards." 19 U.S.C. 2532(2)(A). The term "standard" in the Act includes guidelines that are not mandatory, such as the Jewelry Guides. The Act provides, however, that "the prevention of deceptive practices" is an area where basing a standard on an international standard "may not be appropriate." *Id.* at § 2532(2)(B)(i)(II).

[126] *See http://www.iso.org/iso/standards development/process and procedures how are standards developed.htm.* Gaetano Cavalieri Comment at 2.

[127] Moreover, the current Guides already conflict with ISO and CIBJO standards in that they allow marketers to mark products as platinum, with certain qualifications, even though they contain less than 85% platinum (provided they contain at least 50% platinum and 95% PGM).

[128] *See, e.g.,* JVC Comment at 13.

[129] Karat Platinum Comment 2005 at 2.

the Guides to clarify that marketers may mark or stamp platinum/base metal alloy jewelry accurately to indicate composition using parts per thousand and standard chemical abbreviations (*e.g.,* 585 Pt., 415 Co.) without triggering the new disclosure. This amendment should insure that marketers are not deterred from marking their products based upon the Commission's new platinum guidance. The Commission proposed this amendment in its 2008 FRN, and no commenter specifically objected. If actual deception occurs based on the lack of marking, or the lack of further disclosure, the Commission may consider amending the Guides at a later date.

Finally, although Karat Platinum supported the Commission's general approach, it argued that the Commission should level the playing field by amending the Guides to provide that marketers of both platinum/base metal alloys and platinum/PGM products make the same composition and attribute disclosures detailed above. Karat Platinum argued that consumers do not understand the chemical abbreviations used to describe platinum/PGM products containing less than 95% platinum any better than they understand the chemical abbreviations used to describe the content of platinum/base metal alloys. It also argued that platinum/PGM products differ from each other with respect to material attributes such as durability and scratch resistance.

The record suggests that marketers of at least some products consisting of at least 50% but less than 85% platinum and at least 95% PGM may need to make additional disclosures when describing their products as "platinum" to avoid deception; however, further evidence is needed. The attributes of these products may vary depending upon the combination of metals used. We have no evidence whether these differences are material to consumers. Absent such evidence we decline to amend the Guides to provide for additional disclosures. Marketers of these products must ensure that they are not making deceptive statements about their products based on reasonable consumer perception.

We, therefore, conclude that the disclosures, described above, are the best option for addressing deception regarding the attributes of platinum/base metal alloys described as "platinum."

E. The Record Is Insufficient To Warrant Amending the Guides To Address the Marketing of Products Containing Platinum Plating or Coatings

Several comments proposed that the Commission provide detailed guidance regarding the marketing of products containing platinum plating or coating. The JVC comment, for example, proposed addressing a number of issues relating to the marketing of such products, including the platinum content and thickness of platinum plating, washing or flashing, and heavy plating. The record, however, does not include any evidence regarding how consumers perceive products with platinum plating or coating or the claims made for them. Nor does the record include any evidence showing how the industry proposal would address any problem that may exist, or how consumers would perceive the disclosures contemplated by the proposal. Accordingly, the Commission declines to amend the Guides to address the marketing of products with platinum plating or coatings at this time.[130]

List of Subjects in 16 CFR Part 23

Advertising, Jewelry, Labeling, Pewter, Precious metals, and Trade practices.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR part 23 as follows:

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

■ 1. The authority citation for part 23 is revised to read as follows:

Authority: 15 U.S.C. 45, 46.

■ 2. Amend § 23.0 by adding paragraphs (d) and (e) to read as follows:

23.0 Scope and application.

* * * * *

(d) These guides set forth the Federal Trade Commission's current thinking about claims for jewelry and other articles made from precious metals and pewter. The guides help marketers and other industry members avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, may take action under the FTC Act if a marketer or other industry member makes a claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

(e) The guides consist of general principles, specific guidance on the use of particular claims for industry products, and examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. Industry members may use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act.

■ 3. Amend § 23.7 by adding paragraphs (b)(4) and (c)(5) to read as follows:

23.7 Misuse of words "platinum," "iridium,", "palladium," "ruthenium," "rhodium," and "osmium."

* * * * *

(b) * * *

(4) Use of the word "Platinum," or any abbreviation accompanied by a number or percentage indicating the parts per thousand of pure Platinum contained in the product, to describe all or part of an industry product that contains at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and does not contain at least 950 parts per thousand PGM (for example, "585 Plat.") without a clear and conspicuous disclosure, immediately following the name or description of such product:

(i) Of the full composition of the product (by name and not abbreviation) and percentage of each metal; and

(ii) That the product may not have the same attributes or properties as traditional platinum products. *Provided, however,* that the marketer need not make disclosure under § 23.7(b)(4)(ii), if the marketer has competent and reliable scientific evidence that such product does not differ materially from any one product containing at least 850 parts per thousand pure Platinum with respect to the following attributes or properties: durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized or repaired, retention of precious

[130] The Commission agrees with Karat Platinum that one provision in the amendments adopted herein belongs in Section 23.7(c) rather than 23.7(b). Accordingly, the Commission decided to add this provision to Section 23.7(c) and revise it in a non-substantive manner so that the wording is consistent with the other parts of Section 23.7(c).

metal over time, and any other attribute or property material to consumers.

Note to paragraph (b)(4): When using percentages to qualify platinum representations, marketers should convert the amount in parts per thousand to a percentage that is accurate to the first decimal place (*e.g.,* 58.5% Platinum, 41.5% Cobalt).

(c) * * *

(5) An industry product consisting of at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and not consisting of at least 950 parts per thousand PGM, may be marked or stamped accurately, with a quality marking on the article, using parts per thousand and standard chemical abbreviations (*e.g.,* 585 Pt., 415 Co.).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–32273 Filed 12–27–10; 8:45 am]

BILLING CODE 6750–01–P

JOINT BOARD FOR ENROLLMENT OF ACTUARIES

20 CFR Part 903

Privacy Act of 1974; Implementation

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Direct final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Joint Board for the Enrollment of Actuaries (Joint Board) is amending the requirements regarding access to records to revise the listing of the Joint Board's systems of records for which the Joint Board has claimed exemptions, under section (k)(2) of the Privacy Act, from certain of the Privacy Act's provisions, to revise language that incorrectly implies that the Joint Board has yet to seek such exemptions or that incorrectly implies that the Joint Board's claims for exemption are still pending, and to correct internal references.

DATES: This rule is March 28, 2011 without further action, unless adverse comment is received by January 27, 2011. If adverse comment is received, the Joint Board will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments should be sent to: Executive Director, Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service/Office of Professional Responsibility, SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be available for inspection and copying in the IRS Freedom of Information Reading Room (Room 1621) at the above address. The telephone number for the Reading Room is (202) 622–5164 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Earl Prater, Senior Counsel, Office of Professional Responsibility, at (202) 622–8018 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Joint Board is proposing to simplify the administration of its Privacy Act systems of records by consolidating the current nine systems into three systems of records and to revise the data elements of consolidated systems of records notices so as to ensure that they accurately reflect the jurisdictional coverage and operational requirements of the Joint Board's regulations, which are set out at 20 CFR parts 901 through 903.

The Joint Board will publish separately in the **Federal Register** a notice proposing to consolidate and revise its Privacy Act systems of records. As described in the notice, the Joint Board proposes to consolidate its systems of records as follows:

JBEA–2, Charge Case Inventory Files, will be renamed "Enrolled Actuary Disciplinary Records" and will consolidate all disciplinary-related records from that system and from the following systems—

JBEA–4, Enrollment Files;

JBEA–8, Suspension and Termination Files; and

JBEA–9, Suspension and Termination Roster.

JBEA–4, Enrollment Files, will be renamed "Enrolled Actuary Enrollment Records" and will consolidate all enrollment-related records from that system and from the following systems—

JBEA–1, Application Files;

JBEA–2, Charge Case Inventory Files;

JBEA–3, Denied Applications;

JBEA–5, Enrollment Roster;

JBEA–7, General Information;

JBEA–8, Suspension and Termination Files; and

JBEA–9, Suspension and Termination Roster.

JBEA–6, General Correspondence File, will be renamed "Correspondence and Miscellaneous Records."

The following systems of records will be deleted upon implementation of the consolidated and revised systems:

JBEA–1, Application Files;

JBEA–3, Denied Applications;

JBEA–5, Enrollment Roster;

JBEA–7, General Information;

JBEA–8, Suspension and Termination Files; and

JBEA–9, Suspension and Termination Roster.

If a system of records contains investigative material compiled for law enforcement purposes, section (k)(2) of the Privacy Act permits the head of an agency to promulgate a rule to exempt a system of records from the Privacy Act's provisions granting individuals certain rights with respect to the records that pertain to them, including the right to review and copy the records. As permitted by section (k)(2), the Joint Board published the following documents to exempt certain systems of records:

On August 27, 1975 (40 FR 39387), the Joint Board published a proposed rule to exempt five systems of records, designating the rule as 20 CFR part 903.

On September 30, 1975 (40 FR 45113), the Joint Board published its proposed Privacy Act regulations, designating such regulations as 20 CFR part 903, and in the same publication, the Joint Board republished its proposed rule to exempt five systems of records, redesignating the exempting rule as 20 CFR 903.8.

On January 8, 1976 (41 FR 1493), the Joint Board published its final Privacy Act regulations as 20 CFR part 903 and in the same publication, the Joint Board published its final rule to exempt five systems of records, designating the exempting rule as 20 CFR 903.8.

The systems of records for which the Joint Board has claimed exemptions are listed in 20 CFR 903.8(a) as follows:

JBEA—Enrollment Files;

JBEA—Application Files;

JBEA—General Information;

JBEA—Charge Case Inventory Files; and

JBEA—Suspension and Termination Files.

This direct final rule will amend 20 CFR 903.8 as follows:

a. The exempt system currently listed as "JBEA—Charge Case Inventory Files" will be listed as "JBEA–2, Enrolled Actuary Disciplinary Records."

b. The exempt system currently listed as "JBEA—Enrollment Files" will be listed as "JBEA–4, Enrolled Actuary Enrollment Records."

c. The following systems will be deleted from the listing of exempt systems:

JBEA—Application Files;

JBEA—General Information; and

JBEA—Suspension and Termination Files.

d. Language such as "Exemption will be claimed" (§ 903.8(b)), which incorrectly implies that the Joint Board has yet to seek exemptions, and language such as the "the Joint Board seeks exemption" (§ 903.8(c)(2)(i), (ii), (iii), (iv), (v), and (vi)), which incorrectly implies that the Joint Board's

claims for exemptions are still pending, will be revised.

e. Internal references will be corrected.

These regulations are being published as a direct final rule because the amendments do not impose any requirements on any member of the public. These amendments are the most efficient means for the Joint Board to implement its internal requirements for complying with the Privacy Act.

Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B), the Joint Board finds good cause that prior notice and other public procedures with respect to this rule are unnecessary, and good cause for making this direct final rule effective 90 days after publication in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this direct final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

List of Subjects in 20 CFR Part 903

Access to Records.

Adoption of Amendments to the Regulations

■ Accordingly, 20 CFR part 903 is amended as follows:

PART 903—ACCESS TO RECORDS

■ 1. The authority citation for 20 CFR part 903 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 903.8, is amended by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (b);
■ c. Revising the last sentence of paragraph (c)(2)(i);
■ d. Revising the last sentence of paragraph (c)(2)(ii);
■ e. Amending paragraph (c)(2)(iii) by removing the reference "the preceding subparagraph (2)(B)" and by adding in its place, the reference "the preceding subsection (2)(ii)";
■ f. Revising the last sentence of paragraph (c)(2)(iii);
■ g. Amending paragraph (c)(2)(iv) by removing the reference "the preceding subparagraph (2)(B)" and by adding in its place the reference "the preceding subsection (2)(ii)";
■ g. Amending paragraph (c)(2)(iv) by removing the reference "afforded by subsections (c)(4)(G)" and by adding in its place the reference "afforded by subsections (e)(4)(G)"; and
■ h. Revising the last sentence of paragraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi).

The revisions read as follows:

§ 903.8 Exemptions.

(a) *Names of systems:* JBEA–2, Enrolled Actuary Disciplinary Records; and JBEA–4, Enrolled Actuary Enrollment Records.

(b) *Provisions from which exempted:* These systems contain records described in section (k)(2) of the Privacy Act of 1974, 5 U.S.C. 552a(k)(2). Exemptions are claimed for such records only where appropriate from the following provisions: sections (c)(3); (d); (e)(1); (e)(4)(G), (e)(4)(H), and (e)(4)(I); and (f) of 5 U.S.C. 552a.

(c) * * *

(2) * * *

(i) * * * For these reasons, the Joint Board claims exemption from the requirements of subsection (c)(3) of the Act.

(ii) * * * For these reasons, the Joint Board claims exemptions from the requirements of subsections (d)(1), (e)(4)(H), and (f)(2), (3), and (5) of the Act.

(iii) * * * Therefore, the Joint Board claims exemptions from the requirements of subsections (d)(2), (3), and (4), (e)(4)(H), and (f)(4).

(iv) * * * For these reasons, the Joint Board claims exemptions from the requirements of subsections (e)(4)(G) and (f)(1).

(v) * * * For these reasons, the Joint Board claims exemption from the requirements of subsection (e)(1).

(vi) * * * For these reasons, the Joint Board claims exemption from the requirements of subsection (e)(4)(I).

Dated: November 4, 2010.

Carolyn E. Zimmerman,

Chair, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2010–32165 Filed 12–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA–2010–N–0002]

New Animal Drugs; Deslorelin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Thorn Bioscience LLC. The NADA provides for the use of deslorelin acetate injectable suspension in mares for inducing ovulation.

DATES: This rule is effective December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Amy L. Omer, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8336, e-mail: *amy.omer@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Thorn Bioscience LLC, 1044 East Chestnut St., Louisville, KY 40204, filed NADA 141–319 that provides for use of SUCROMATE Equine (deslorelin acetate), an injectable suspension, in mares for inducing ovulation. The NADA is approved as of November 5, 2010, and the regulations are amended in 21 CFR 522.533 to reflect the approval.

In addition, Thorn Bioscience LLC has not been previously listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add an entry for "Thorn Bioscience LLC"; and in the table in paragraph (c)(2) numerically add an entry for "051330" to read as follows:

* * * * *

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Thorn Bioscience LLC, 1044 East Chestnut St., Louisville, KY 40204	051330
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
051330	Thorn Bioscience LLC, 1044 East Chestnut St., Louisville, KY 40204
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Revise § 522.533 to read as follows:

§ 522.533 Deslorelin.

(a) *Specifications*—(1) Each implant contains 2.1 milligrams (mg) deslorelin acetate.

(2) Each milliliter (mL) of suspension contains 1.8 mg deslorelin acetate.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter as follows:

(1) No. 043246 for use of product described in paragraph (a)(1) as in paragraph (c)(1) of this section.

(2) No. 051330 for use of product described in paragraph (a)(2) as in paragraph (c)(2) of this section.

(c) *Conditions of use*—(1) *Horses and ponies*—(i) *Amount.* One implant per mare subcutaneously in the neck.

(ii) *Indications for use.* For inducing ovulation within 48 hours in estrous mares with an ovarian follicle greater than 30 mL in diameter.

(iii) *Limitations.* Do not use in horses or ponies intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses*—(i) *Amount.* Administer 1.8 mg (1 mL) by intramuscular injection in the neck.

(ii) *Indications for use.* For inducing ovulation within 48 hours in cyclic estrous mares with an ovarian follicle between 30 and 40 mL in diameter.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 9, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–32554 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9505]

RIN 1545–BG36

Hybrid Retirement Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains correctioning amendments to correct errors resulting from the publication of to final regulations (TD 9505) that were published in the **Federal Register** on Tuesday, October 19, 2010 (75 FR 64123) providing guidance relating to certain provisions of the Internal Revenue Code that apply to hybrid defined benefit pension plans.

DATES: This correcting amendment is effective on December 28, 2010, and is applicable on October 19, 2010.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu, Lauson C. Green, or Linda S. F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9505) that are the subject of this document are under section 411 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9505) contain errors that may prove to be misleading and are in need of clarification.

List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.411(b)(5)–1 is amended by:

■ 1. Revising the paragraph (b)(1)(ii)(A).

■ 2. Revising the first sentence of paragraph (b)(1)(iv) *Example 4.*(iii).

■ 3. Revising the first sentence of paragraph (c)(5) *Example 2.*(iv).

■ 4. Revising the third sentence of paragraph (c)(5) *Example 3.*(i).

■ 5. Revising the paragraph (d)(1)(iii).

■ 6. Revising the first sentence of paragraph (f)(2)(iii).

The revisions read as follows:

§ 1.411(b)(5)–1 Reduction in rate of benefit accrual under a defined benefit plan.

* * * * *

(b) * * *

(1) * * *

(ii) * * * (A) *In general.* Except as provided in paragraphs (b)(1)(ii)(B), (C), and (D) of this section, the safe harbor provided by section 411(b)(5)(A) and paragraph (b)(1)(i) of this section is available with respect to an individual only if the individual's accumulated benefit under the plan is expressed in terms of only one safe-harbor formula measure and no similarly situated, younger individual who is or could be a participant has an accumulated benefit that is expressed in terms of any measure other than that same safe-harbor formula measure. Thus, for example, if a plan provides that the accumulated benefit of participants who

are age 55 or over is expressed under the terms of the plan as a life annuity payable at normal retirement age (or current age, if later) as described in paragraph (b)(1)(i)(A) of this section and the plan provides that the accumulated benefit of participants who are younger than age 55 is expressed as the current balance of a hypothetical account as described in paragraph (b)(1)(i)(B) of this section, then the safe harbor described in section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to individuals who are or could be participants who are age 55 or over.

(iv) * * *

Example 4. * * *

(iii) * * * If, instead of the facts in paragraph (i) of this *Example 4,* the plan had been amended to provide only participants who have not yet attained age 55 by January 1, 2012, with a benefit that is the greater of the benefit under the average annual compensation formula and a benefit that is based on the balance of a hypothetical account, then the safe harbor would not be satisfied with respect to individuals who have attained age 55 by January 1, 2012. * * *

* * * * *

(c) * * *

(5) * * *

Example 2. * * *

(iv) * * * The plan provides that, as of a participant's annuity starting date, the plan will determine whether the benefit attributable to the opening hypothetical account balance payable in the particular optional form of benefit selected is equal to or greater than the benefit accrued under the plan through the date of conversion and payable in the same generalized optional form of benefit with the same annuity starting date. * * *

Example 3. * * * (i) * * * Under the terms of Plan E, the benefit attributable to A's opening hypothetical account balance is increased so that A's straight life annuity commencing on January 1, 2015, is $1,000 per month. * * *

* * * * *

(d) * * *

(1) * * *

(iii) *Market rate of return for single rates.* Except as otherwise provided in this paragraph (d)(1), an interest crediting rate is not in excess of a market rate of return only if the plan terms provide that the interest credit for each plan year is determined using one of the following specified interest crediting rates:

* * * * *

(f) * * *

(2) * * *

(iii) * * * For the periods after the statutory effective date set forth in paragraph (f)(1) of this section and before the regulatory effective date set forth in paragraph (f)(2)(i) of this section, the safe harbor and other relief of section 411(b)(5) apply and the market rate of return and other requirements of section 411(b)(5) must be satisfied. * * *

Guy R. Traynor

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010–32539 Filed 12–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9508]

RIN 1545–BJ85

Source of Income From Qualified Fails Charges; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (TD 9508) thatwere published in the **Federal Register** on Wednesday, December 8, 2010 (75 FR 76262)providing guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442.

DATES: This correction is effective on December 28, 2010, and is applicable beginning December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy or Anthony J. Marra at (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9508) that are the subject of this document are under section 863 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 9508) contain an error that may prove to be misleading and is in need of clarification.

List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.863–10T is amended by revising the paragraph (f) to read as follows:

§ 1.863–10T Source of income from a qualified fails charge (temporary).

* * * * *

(f) *Expiration date.* This section expires on December 6, 2013.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010–32536 Filed 12–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

[Docket No. USPC–2010–04]

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rules.

SUMMARY: The U.S. Parole Commission is revising its rule on original jurisdiction cases. The revision adds as a criterion for original jurisdiction designation a case in which the offender caused the death of a law enforcement officer while the officer was performing his duty. In the rule on the quorum of Commissioners needed for agency action, the Commission is adding provisions that describe the consequence of a vote in which the Commission members are equally divided in their decisions.

DATES: *Effective date:* January 31, 2011.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U. S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: In 1974, the predecessor to the United States Parole Commission, the United States Board of Parole, began using an "original jurisdiction" voting procedure. 28 CFR 2.17 (1974). A regional director—a Parole Board member sitting in one of the five regional offices of the former Board—could designate the case for the "original jurisdiction of the regional directors," and the decision to grant or deny parole would then be made on the majority vote of the five regional directors at a quarterly meeting of these directors. The criteria for designation were: (1) National security offense; (2) organized crime offender; (3) national or unusual interest in the prisoner; and (4) long-term sentence. The prisoner could appeal a parole denial to the three national Board members in Washington, DC and some appeals were scheduled for resolution by the entire eight-member Board of Parole at a quarterly business meeting. 28 CFR 2.27 (1974).

In explaining a 1975 amendment to § 2.17, the Board of Parole noted that the increased voting requirement in original jurisdiction cases was "designed to protect the public's confidence in the integrity of Parole Board decisions by providing a broadly based consensus of Board Members in cases where there is more likely to be public interest in the grant or denial of parole." 40 FR 5357 (Feb. 5, 1975). That same year the Board eliminated the requirement that all five regional directors vote on original jurisdiction cases, and instead provided that the decision could be made on the votes of a regional director and the national directors in Washington, DC. Appeals would be decided at the Board's quarterly business meetings. In 1976, Congress enacted the Parole Commission Reorganization Act (Pub. L. 94–233) and confirmed many of the changes made by the Board of Parole on the regionalization of parole functions and the use of paroling policy guidelines. In the conference report regarding the legislation, the conferees from the House and Senate stated that the new statute was flexible enough to allow the Parole Commission to continue to reserve special categories of cases for initial consideration by the full Commission, but that they expected that such consideration "should occur only in cases involving special circumstances." House Conference Report No. 94–838 at 22.

The original jurisdiction regulation has remained essentially the same since 1976. The voting quorum requirement and nature of the second review has changed given the fluctuating membership of the Commission. The initial decision is now made by the majority vote of those Commissioners holding office, and the second review is no longer denominated an "appeal," but a reconsideration by the entire membership. The designation of a case for the original jurisdiction of the Commission only affects the number of Commissioners voting on a case disposition and does not change the substantive criteria in making the determination.

In recent years the Commission has conducted parole determination proceedings for some prisoners whose offense behavior caused the death of a law enforcement officer during the officer's performance of his duties, whether an agent with the Federal Bureau of Investigation, a ranger with the U.S. Park Service, or a local police officer. These proceedings, and the possibility of the prisoner's discharge from custody on parole, understandably cause heightened interest in the Commission's decision-making process from the victim's family, other persons and organizations, and various media representatives. While the Commission's present criteria for original jurisdiction designations almost always result in the use of the voting procedure for prisoners who have caused the death of law enforcement personnel, the Commission believes that an additional criterion specifying the use of the original jurisdiction procedure for these cases is appropriate. The addition of this criterion expresses the Commission's resolve that the general public, and those persons charged with enforcing federal, state and local laws, have confidence in parole decisions for offenders whose grievous crimes against law enforcement personnel have caused an unusual interest in the outcome of the parole consideration. In revising § 2.17, the Commission has also edited paragraph (a) to make it more readable.

The Commission is also revising its regulation at 28 CFR 2.63 that describes the quorum requirement of the Commission. The revision specifies the decision that results from an evenly-split vote of the Commission's members on the disposition of a matter before the entire membership of the Commission. The Commission presently has four voting members holding office so the prospect of such a vote is more likely than when the Commission has an odd number of members. The revised rule implements the common law and parliamentary law principle that a proposed action that is the subject of a tie vote fails of adoption. *E.g.,* 59 AmJur 2d, Parliamentary Law § 17 (2010). The Commission already incorporates this principle in its rule at 28 CFR 2.27(a) on the disposition of petitions for reconsideration in original jurisdiction cases. When a majority vote of the Commission's membership cannot be reached in a case disposition, the revised rule states that if the Commission made an earlier decision for the offender, for example "continue to a presumptive parole after service of 240 months," then the previous decision remains unchanged. If the Commission has not previously made a decision on the case matter under review, then the tie vote results in a return to the offender's status quo ante, which may be a prisoner's continuance in custody until the next parole release hearing, or a parolee's return to parole supervision after release from the custody of a violator warrant. The one significant exception to this general rule occurs in the case of a prisoner under consideration for mandatory parole pursuant to 18 U.S.C. 4206(d). This statute requires the prisoner's release on parole unless the Commission makes a finding on one of the disqualifying criteria listed in the statute. If, after a hearing in a mandatory parole consideration there is a tie vote by the Commissioners, the result would be a parole release. The amended rule also explicitly authorizes a re-vote by the Commissioners to resolve an impasse.

The Commission is promulgating these rules as final rules without the opportunity for public comment because the rules are procedural rules that do not affect the substantive criteria for making case dispositions.

Implementation

The regulations set forth below will be made effective on January 31, 2011.

Executive Order 12866

The U. S. Parole Commission has determined that these final rules do not constitute significant rules within the meaning of Executive Order 12866.

Executive Order 13132

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The final rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

These rules are not "major rules" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

■ Accordingly, the U. S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.17 (b) to read as follows:

§ 2.17 Original jurisdiction cases.

(a) * * *

(b) A Commissioner may designate a case as an original jurisdiction case if the case involves an offender:

(1) Who committed a serious crime against the security of the nation;

(2) Whose offense behavior included an unusual degree of sophistication or planning or was part of a large scale criminal conspiracy or continuing criminal enterprise;

(3) Who received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or a victim of the crime;

(4) Whose offense behavior caused the death of a law enforcement officer while the officer was in the line of duty; or

(5) Who was sentenced to a maximum term of at least 45 years or life imprisonment.

* * * * *

■ 3. Revise § 2.63 by designating the existing text as paragraph (a) and adding paragraph (b) as follows:

§ 2.63 Quorum.

(a) * * *

(b)(1) In the event of a tie vote of the Commission's membership on a matter, the matter that is the subject of the vote is not adopted by the Commission.

(2) If the matter that is the subject of the tie vote is the disposition of an offender's case, then the result of the tie vote is the offender's status quo ante, *i.e.,* no action is taken that is more favorable or more adverse regarding the offender. If in an earlier decision the Commission has given an offender a presumptive release date or a date for a 15-year reconsideration hearing, then the result of the tie vote is no change in the presumptive date or the date of the 15-year reconsideration hearing. If an offender is facing possible parole rescission or revocation, the result of the tie vote is the offender's retention of the parole effective date or the offender's return to supervision. *Exception:* If there is a tie vote in making one of the findings required by § 2.53 in a mandatory parole determination, the result of the tie vote is that the prisoner must be granted mandatory parole.

(3) The Commission may re-vote on a case disposition to resolve a tie vote or other impasse in satisfying a voting requirement of these rules.

Dated: December 21, 2010.

Isaac Fulwood,

Chairman, United States Parole Commission.

[FR Doc. 2010–32596 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–31–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Simplified Proceedings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, or Mine Act. Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is publishing a final rule to simplify the procedures for handling certain civil penalty proceedings.

DATES: The final rule takes effect on March 1, 2011. The Commission will accept written and electronic comments received on or before January 12, 2011.

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state "Comments on Simplified Proceedings" in the subject line and be sent to *mmccord@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2010, the Commission published in the **Federal Register** a rule proposing Simplified Proceedings in certain civil penalty proceedings. 75 FR 28223. The Commission explained that since 2006, the number of new cases filed with the Commission has dramatically increased, and that in order to deal with that burgeoning caseload, the Commission is considering methods to simplify and streamline its procedures for handling certain civil penalty proceedings.

The Commission invited comments on the proposed rule through June 21, 2010. The Commission received comments from: (1) The Law Offices of Adele L. Abrams; (2) the United Mine Workers of America; (3) the Secretary of Labor through the Office of the Solicitor ("MSHA" or the "Secretary"); (4) Public Citizen; (5) Industrial Minerals Association-North America; (6) Alliance Coal, LLC; (7) Chris Barber; (8) Arch Coal, Inc.; (9) Jackson Kelly PLLC; and (10) Imerys.

The major differences between the simplified procedures set forth in the proposed rule and current conventional

procedures were that, under the proposed simplified procedures, answers to petitions for assessment of penalty would not be required; motions would be eliminated to the greatest extent practicable; early discussions among the parties and the Commission Administrative Law Judge ("Judge") would be required to narrow and define the disputes between parties; parties would be required to disclose certain materials early in the proceedings; discovery would not be permitted except as ordered by the Judge; interlocutory appeals would not be permitted; and post-hearing briefs would not be allowed, except as ordered by the Judge. Although the administrative process would be streamlined, hearings would remain full due process hearings as they are under conventional procedures. The proposed rule is unchanged in many ways, and the characteristics of Simplified Proceedings described above also are present in this final rule.

Pilot Program

A commenter suggested that the Commission should implement Simplified Proceedings as a pilot program and then conduct an independent evaluation of whether the new procedures were successful in streamlining and simplifying cases before finalizing the Simplified Proceedings rule. The Commission agrees that Simplified Proceedings should be implemented as a pilot program for a finite period of time. Accordingly, this final rule shall be implemented as a pilot program for nine to twelve months. During the pilot program, the Commission will gather information to assess the success of Simplified Proceedings (*e.g.,* comparing how long it takes to process cases under Simplified Proceedings compared to processing under conventional procedures, and whether there is any beneficial impact on the Commission's backlog of undecided cases). The Commission intends to publish the results of its pilot program and request comments regarding the regulated community's experience with Simplified Proceedings. These comments and the information gathered from the Commission during the pilot program will form the basis of any future final Simplified Proceedings rule.

Eligibility

The Commission proposed various characteristics to describe which cases might be eligible for Simplified Proceedings. Under the proposed rule, cases designated for Simplified Proceedings by the Chief Judge or the Judge's designee would not involve complex issues of law or fact and would generally include one or more of the following characteristics: (1) Limited number of citations; (2) an aggregate proposed penalty of not more than $15,000 per docket and not more than $50,000 per proceeding; (3) no citation or order issued under sections 104(b), 104(d), 104(e), 105(c), 107(a), 110(b), 110(c), or 111 of the Mine Act; (4) not involving a fatality; or (5) a hearing that is expected to take not more than one day.

In the preamble to the proposed rule, the Commission discussed the difficulty in describing the criteria for eligibility for Simplified Proceedings, noting that it would be useful for the Commission to consider, at an early stage, all of the contested civil penalties that might be at issue in a single hearing. The Commission explained that it plans to review each petition for assessment of penalty and proposed penalty assessment form in its consideration of whether a case is appropriate for Simplified Proceedings. MSHA currently groups citations and orders and their proposed penalties on a proposed penalty assessment form based upon a 30-day billing cycle. Under MSHA's current practice for grouping citations and orders, the Commission would not have a complete view of all of the contested penalties that may be relevant in a particular hearing. Accordingly, the Commission requested suggestions regarding criteria that might be used to better group proposed penalties and the underlying citations and orders.

Industry commenters suggested that citations and orders should be grouped by inspection on a proposed assessment form. MSHA agreed that citations and orders should be grouped by inspection (which MSHA designates by an "event number"), and further by inspector where more than one inspector is involved in an inspection.

The Commission also received comments suggesting that some factors should be added to make more cases eligible for Simplified Proceedings, such as that cases should be included in which parties mutually agree to opt-in to Simplified Proceedings. The Commission received other suggestions for excluding cases from Simplified Proceedings, such as that cases should be excluded if they involve special assessments, pure legal issues, expert witnesses, and the occurrence of injury or illness. Commenters had varying opinions on the number of citations, penalty amount, and hearing length that should make a case eligible for Simplified Proceedings.

The Commission agrees that, prior to docketing, citations and orders for some cases should be grouped by inspection, and further by inspector where more than one inspector is involved in an inspection. The Commission should then have a clearer picture of the citations and orders that might be at issue in a hearing and whether the case is appropriate for Simplified Proceedings. The Commission has conferred with MSHA regarding the grouping of citations and orders. We expect this grouping to occur prior to the effective date of this final rule.

As to eligibility criteria for Simplified Proceedings, the Commission has concluded that cases designated for Simplified Proceedings shall not involve fatalities or the occurrence of injuries or illnesses. Furthermore, cases designated for Simplified Proceedings will generally include one or more of the following characteristics: (1) The case involves only citations issued under section 104(a) of the Mine Act; (2) the proposed penalties were not specially assessed under 30 CFR 100.5; (3) the case does not involve complex issues of law or fact; (4) the case involves a limited number of citations to be determined by the Chief Judge or his designee; (5) the case involves a limited penalty amount to be determined by the Chief Judge or his designee; (6) the case will involve a hearing of limited duration to be determined by the Chief Judge or his designee; (7) the case does not involve only legal issues; and (8) the case does not involve expert witnesses. Information gathered during the pilot program may better clarify appropriate criteria for Simplified Proceedings eligibility.

Designation of Case for Simplified Proceedings

The Commission proposed that a civil penalty proceeding would be designated for Simplified Proceedings by the Chief Judge or the Judge's designee. Under proposed section 2700.102, after a case has been designated for Simplified Proceedings, the Commission would issue a notice of designation to the parties, which would also provide certain information, such as contact information for the Judge assigned to the case, including the Judge's e-mail address. In addition, parties would be required to file a notice of appearance providing specific contact information for the counsel or representative acting on behalf of the party, if that information had not already been provided. The operator would not be required to file an answer to the petition for assessment of civil penalty.

Under proposed section 2700.103, even if a case had not been designated for Simplified Proceedings by the Chief Judge or the Judge's designee, a party had the opportunity to request that a case be designated. The Commission proposed that the request would need to be in writing and state whether the request is opposed. The request would also address the characteristics specified in the rule that make the case appropriate for designation. If a request for designation were granted, under the proposed rule, the parties would be required to file and serve notices of appearance providing specific contact information unless such contact information had already been provided. Under the proposed rule, if a party requested Simplified Proceedings, the deadline for filing an answer to a petition for assessment of penalty would be suspended. If a request were denied, the time for filing an answer would begin to run upon issuance of the Judge's order denying the request.

The Commission received comments suggesting that the decision to opt-in to Simplified Proceedings should be exclusively controlled by the parties. Some commenters also suggested that parties should be able to opt-in to Simplified Proceedings at any time, that all cases should be eligible for Simplified Proceedings, and that any request to opt-in should be consented to by all parties.

The Commission has declined to adopt these suggestions and has made very few changes to proposed sections 2700.102 and 2700.103. Similar to the Simplified Proceedings rule adopted by the Occupational Safety and Health Review Commission ("OSHRC") (*see* 29 CFR 2200.203), the Commission concludes that some cases that meet certain criteria should be designated for Simplified Proceedings by the Commission, and that the decision to opt-in should not be within the exclusive control of the parties. If a party disagrees with a case's designation for Simplified Proceedings, the party may file a motion to opt-out pursuant to section 2700.104. The Commission has further determined that parties should not be able to automatically opt-in to Simplified Proceedings in any type of case even with the mutual consent of all parties. However, a mutual request to opt-in involving a case that does not meet the eligibility criteria may be granted at the discretion of the Judge. Regarding the timing of a party's request for Simplified Proceedings, proposed section 2700.103 did not set forth a specific time for when a party must file its request for Simplified Proceedings, and a deadline has not been set forth in the final rule. The Commission is not requiring that all requests to opt-in must be consented to by all parties. Finally, the Commission has determined that paragraph (d) should be revised to conform more closely with the language of section 2700.100(b)(1).

Discontinuance of Simplified Proceedings

Under proposed section 2700.104, if it became apparent at any time that a case was not appropriate for Simplified Proceedings, the assigned Judge could discontinue Simplified Proceedings upon the Judge's own motion or upon the motion of any party. A party would have the opportunity to move to discontinue the Simplified Proceedings at any time during the proceedings but no later than 30 days before the scheduled hearing. The moving party would be required to confer with the other parties and state in the motion if any other party opposes or does not oppose the motion. Parties opposing the motion would have eight business days after service of the motion to file an opposition. The Commission proposed that if Simplified Proceedings were discontinued, the Judge would issue such orders as are necessary for an orderly continuation under conventional rules.

The Commission received some comments suggesting that opting-out of Simplified Proceedings should be exclusively controlled by the parties, while other comments expressed agreement with the language proposing that opting-out should be within the discretion of the Judge. Another commenter suggested that more information should be provided regarding the grounds for a Judge's decision to discontinue Simplified Proceedings.

The Commission has concluded that the rule should be adopted as proposed. However, if the pilot program reveals that revisions should be made to the process for discontinuing Simplified Proceedings, the Commission will consider making those revisions.

Pre-Hearing Exchange of Information

The Commission proposed in section 2700.107 that discovery would "only be allowed under the conditions and time limits set by the Judge." Rather than requiring the disclosure of documents and materials through discovery, the Commission proposed a more expeditious means for disclosure through the mandatory exchange of documents and materials and through a pre-hearing conference. More specifically, proposed section 2700.105 provided that within 30 calendar days after a case had been designated for Simplified Proceedings, each party would provide to all other parties copies of all documents, electronically stored information and tangible things that the disclosing party had and would use to support its claims or defenses. Materials required to be disclosed under the proposed rule would include, but would not be limited to, inspection notes, citation documentation, narratives, photos, diagrams, preshift and onshift reports, training documents, mine maps and witness statements (subject to the provisions of 29 CFR 2700.61). Under proposed section 2700.106, as early as practicable after the parties received these materials, the Judge would order and conduct a pre-hearing conference. Proposed section 2700.106 further provided that at the pre-hearing conference, the parties would discuss the following: Settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. At the conclusion of the conference, the Judge would issue an order setting forth any agreements reached by the parties and would specify in the order the issues to be addressed by the parties at the hearing.

The industry commenters generally suggested that there should not be a ban on discovery, and that they should be permitted to depose the inspector who issued the contested citations and orders. MSHA, on the other hand, commented that discovery should be allowed only in extraordinary circumstances. The Commission believes that the limit on discovery is a key provision to simplifying and streamlining cases designated for Simplified Proceedings. The final rule replaces the language in proposed section 2700.107 with the language of proposed section 2700.100(b)(5), which more clearly articulates that discovery is generally prohibited.

Regarding the mandatory disclosure of information by parties set forth in proposed section 2700.105, commenters suggested that the time-frame for disclosure of documents should be changed from 30 to 45 days. Commenters also suggested expanding the information which must be disclosed to include all documents related to a matter that are in a party's possession (and not just those that it would use in litigation) and the disclosure of documents supporting the opposing party's claims.

The final rule changes the time-frame for disclosure to 45 days and requires the exchange of information suggested in the comments. The Commission has

further expanded disclosure to include rebuttal forms and to specify requirements for privilege logs. An expanded exchange of information balances the lack of discovery permitted by the Simplified Proceedings rule.

Regarding proposed section 2700.106, the Commission received comments stating that, since admissions made in the interest of settlement are not intended to be admissible in formal proceedings, a Judge assigned to a Simplified Proceedings case, who will ultimately decide the case, should not hear settlement discussions during a pre-hearing conference. A commenter also suggested that the hearing date should be set during the pre-hearing conference.

The Commission agrees that the Judge assigned to a Simplified Proceedings case should not hear the content of the settlement discussions during the pre-hearing conference, and that the rule should clarify that only settlement efforts by the parties (not the actual content of settlement) will be discussed during pre-hearing conferences. The final rule further requires that a settlement discussion occur between parties before the pre-hearing conference. In order to allow as much flexibility as possible, the rule has not been revised to require a hearing date to be set at the end of the pre-hearing conference.

Hearing

The Commission proposed in section 2700.108 that as soon as practicable after the conclusion of the pre-hearing conference, the Judge would hold a hearing on any issue that remained in dispute. The hearing would be a full due process hearing. Each party would present oral argument at the close of the hearing, and post-hearing briefs would not be permitted except by order of the Judge. The Judge would issue a written decision that would constitute the final disposition of the proceedings within 60 calendar days after the hearing. If the Judge announced a decision orally from the bench, it would be reduced to writing within 60 calendar days after the hearing.

The Commission received no comments on proposed section 2700.108 and adopts the rule without change.

Miscellaneous

The Commission proposed conforming changes to Rule 5(c), 29 CFR 2700.5(c). Those changes conform the contact information required in Simplified Proceedings with the contact information required in all proceedings. The Commission received no comments on the proposed changes to Rule 5(c) and adopts the rule as proposed.

The Commission received a comment suggesting that rulemaking comments should be posted on the Commission's Web site. The Commission agrees and shall make rulemaking comments, including those to this final rule, available on the Commission's Web site (*http://www.fmshrc.gov*).

A commenter stated that the Commission should provide sufficient information to allow the commenter to assess whether the Simplified Proceedings rule is sufficient to help draw down the Commission's backlog of undecided cases quickly. The Commission intends to provide such information after it conducts the pilot program.

The Commission received comments that it should adopt settlement procedures similar to those found in OSHRC's rules at 29 CFR part 2200, subpart H. The Commission will consider the appropriateness of promulgating a settlement subpart after the conclusion of the pilot program for Simplified Proceedings.

Notice and Public Procedure

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") do not apply to rules of agency procedure (*see* 5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comments until January 12, 2011.

The Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

The Commission has determined that the Congressional Review Act, 5 U.S.C. 801, is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this rule "does not substantially affect the rights or obligations of non-agency parties."

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission amends 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

■ 2. Section 2700.5 is amended by revising paragraph (c) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address, business telephone number, cell telephone number if available, fax number if available, and e-mail address if available. Written notice of any change in contact information shall be given promptly to the Commission or the Judge and all other parties.

* * * * *

■ 3. A new subpart J is added to read as follows:

Subpart J—Simplified Proceedings

Sec.

2700.100 Purpose.
2700.101 Eligibility for Simplified Proceedings.
2700.102 Commission Commencement of Simplified Proceedings.
2700.103 Party Request for Simplified Proceedings.
2700.104 Discontinuance of Simplified Proceedings.
2700.105 Disclosure of Information by the Parties.
2700.106 Pre-Hearing Conference.
2700.107 Discovery.
2700.108 Hearing.
2700.109 Review of Judge's Decision.
2700.110 Application.

Subpart J—Simplified Proceedings

§ 2700.100 Purpose.

(a) The purpose of this Simplified Proceedings subpart is to provide simplified procedures for resolving civil penalty contests under the Federal Mine Safety and Health Act of 1977, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the

requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those that would otherwise apply in subparts A, C, G, H, and I of this part are as follows.

(1) Answers to petitions for assessment of penalty are not required.

(2) Motions are eliminated to the greatest extent practicable.

(3) Early discussions among the parties and the Administrative Law Judge are required to narrow and define the disputes between the parties.

(4) The parties are required to provide certain materials early in the proceedings.

(5) Discovery is not permitted except as ordered by the Administrative Law Judge.

(6) Interlocutory appeals are not permitted.

(7) The administrative process is streamlined, but hearings will be full due process hearings. The parties will argue their case orally before the Judge at the conclusion of the hearing instead of filing briefs. In many instances, the Judge will render a decision from the bench.

§ 2700.101 Eligibility for Simplified Proceedings.

Cases designated for Simplified Proceedings will not involve fatalities, injuries or illnesses, and will generally include one or more of the following characteristics:

(a) The case involves only citations issued under section 104(a) of the Mine Act.

(b) The proposed penalties were not specially assessed under 30 CFR 100.5.

(c) The case does not involve complex issues of law or fact.

(d) The case involves a limited number of citations to be determined by the Chief Judge or designee.

(e) The case involves a limited penalty amount to be determined by the Chief Judge or designee.

(f) The case will involve a hearing of limited duration to be determined by the Chief Judge or designee.

(g) The case does not involve only legal issues.

(h) The case does not involve expert witnesses.

§ 2700.102 Commission Commencement of Simplified Proceedings.

(a) *Designation.* Upon receipt of a petition for assessment of penalty, the Chief Administrative Law Judge, or designee, has the authority to designate an appropriate case for Simplified Proceedings.

(b) *Notice of designation.* After a case has been designated for Simplified Proceedings, the Commission will issue a Notice of Designation for Simplified Proceedings. The Notice will inform parties that the case has been designated for Simplified Proceedings, state the name and contact information for the Commission Administrative Law Judge assigned to the case, provide instructions for filing a notice of appearance in the Simplified Proceedings, and state that the operator need not file an answer to the petition for assessment of penalty. The Commission will send the notice of designation to the parties' addresses listed on the petition for assessment of penalty.

(c) *Notice of appearance.* Unless the contact information described in this paragraph has already been provided to the Judge, within 15 calendar days after receiving a notice of designation, the parties shall file notices of appearance with the assigned Judge. Each notice of appearance shall provide the following information for the counsel or representative acting on behalf of the party: Name, address, business telephone number, cell telephone number if available, fax number if available, and e-mail address if available. Notices of appearance shall be served on all parties in accordance with the provisions of § 2700.7.

(d) *No filing of an answer under Subpart C of this part.* If a case has been designated for Simplified Proceedings, an answer pursuant to § 2700.29 is not required to be filed.

§ 2700.103 Party Request for Simplified Proceedings.

(a) *Party request.* Any party may request that a case be designated for Simplified Proceedings. The request must be in writing and should address the characteristics specified in § 2700.101. The request must be filed with the Commission in accordance with the provisions of § 2700.5 and served on all parties in accordance with the provisions of § 2700.7. The requesting party shall confer or make reasonable efforts to confer with the other parties and shall state in the request if any other party opposes or does not oppose the request. Parties opposing the request shall have eight business days after service of the motion to file an opposition.

(b) *Judge's ruling on request.* The Chief Administrative Law Judge or the Judge assigned to the case may grant a party's request and designate a case for Simplified Proceedings at the Judge's discretion.

(c) *Notice of appearance.* Unless the contact information described in this paragraph has already been provided to the Judge, within 15 calendar days after receiving an order granting a request for Simplified Proceedings, the parties shall file with the Judge notices of appearance described in § 2700.102(c). Notices of appearance shall be served on all parties in accordance with the provisions of § 2700.7.

(d) *No filing of an answer under Subpart C of this part.* If a case has been designated for Simplified Proceedings, an answer pursuant to § 2700.29 is not required to be filed. If a request for Simplified Proceedings is denied, the period for filing an answer will begin to run upon issuance of the Judge's order denying Simplified Proceedings.

§ 2700.104 Discontinuance of Simplified Proceedings.

(a) *Procedure.* If it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the Judge assigned to the case may, upon motion by any party or upon the Judge's own motion, discontinue Simplified Proceedings and order the case to continue under conventional rules.

(b) *Party motion.* At any time during the proceedings but no later than 30 days before the scheduled hearing, any party may move that Simplified Proceedings be discontinued and that the matter continue under conventional procedures. A motion to discontinue must explain why the case is inappropriate for Simplified Proceedings. The moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion. Parties opposing the motion shall have eight business days after service of the motion to file an opposition.

(c) *Ruling.* If Simplified Proceedings are discontinued, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

§ 2700.105 Disclosure of Information by the Parties.

(a) Within 45 calendar days after a case has been designated for Simplified Proceedings, the parties shall provide any information in a party's possession, custody, or control that the disclosing party or opposing party may use to support its claims or defenses. Any material or object that cannot be copied, or the copying of which would be unduly burdensome, shall be described and its location specified. Materials

required to be disclosed include, but are not limited to, inspection notes from the entire subject inspection, rebuttal forms, citation documentation, narratives, photos, diagrams, preshift and onshift reports, training documents, mine maps, witness statements (subject to the provisions of § 2700.61), witness lists, and written opinions of expert witnesses, if any.

(b) If any items are withheld from disclosure on grounds of privilege, the disclosing party shall provide a log describing each item and stating the reason(s) why it was not produced. The privilege log shall provide an index, identifying the allegedly privileged documents and shall provide sufficient detail to permit an informed decision as to whether the document is at least potentially privileged. Specifically, the index must include: A description of the document, including its subject matter and the purpose for which it was created; the date the document was created; the name and job title of the author of the document; and if applicable, the name and job title of the recipient(s) of the document. The judge may order an *in camera* inspection of the privileged documents, if necessary, to determine the proper application of the privilege.

§ 2700.106 Pre-Hearing Conference.

(a) *When held.* As early as practicable after the parties have received the materials set forth in § 2700.105, the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, by telephone, or electronic means. After receipt of the materials set forth in § 2700.105 and prior to the pre-hearing conference, parties are required to engage in a discussion to explore the possibility of settlement.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: Settlement efforts in the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Within a time determined by the Judge during the pre-hearing conference, the parties must provide each other with documents or materials intended for submission as exhibits at the hearing that have not already been provided in accordance with the provisions of § 2700.105. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties, and will specify in the order the issues to be addressed by the parties at hearing.

§ 2700.107 Discovery.

Discovery is not permitted except as ordered by the Administrative Law Judge.

§ 2700.108 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart G of this part, except for §§ 2700.56, 2700.57, 2700.58, 2700.59, 2700.65, and 2700.67, which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is relevant, and not unduly repetitious or cumulative. Testimony will be given under oath or affirmation. The parties are reminded that the Federal Rules of Evidence do not apply in Commission proceedings. Any evidence not disclosed as required by §§ 2700.105 and 2700.106(b), including the testimony of witnesses not identified pursuant to § 2700.106(b), shall be inadmissible at the hearing, except where extraordinary circumstances are established by the party seeking to offer such evidence.

(d) *Court reporter.* A court reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* The Judge shall make a decision that constitutes the final disposition of the proceedings within 60 calendar days after the hearing. The decision shall be in writing and shall include all findings of fact and conclusions of law; the reasons or bases for them on all the material issues of fact, law, or discretion presented by the record; and an order. If a decision is announced orally from the bench, it shall be reduced to writing within 60 calendar days after the hearing. An order by a Judge approving a settlement proposal is a decision of the Judge.

§ 2700.109 Review of Judge's Decision.

After the issuance of the Judge's written decision, any party may petition the Commission for review of the Judge's written decision as provided for in subpart H of this part.

§ 2700.110 Application.

The rules in this subpart will govern proceedings before a Judge in a case designated for Simplified Proceedings under §§ 2700.102 and 2700.103. The provisions of subparts A and I apply to Simplified Proceedings when consistent with these rules in subpart J. The provisions of subpart C of this part apply to Simplified Proceedings except for § 2700.29, which does not apply. The provisions of subpart G of this part apply to Simplified Proceedings except for §§ 2700.56, 2700.57, 2700.58, 2700.59, 2700.65, and 2700.67, which do not apply. The provisions of subpart H of this part apply to Simplified Proceedings except for § 2700.76, which does not apply. The provisions of subparts B, D, E and F of this part do not apply to Simplified Proceedings.

Dated: December 20, 2010.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 2010–32417 Filed 12–27–10; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1109]

RIN 1625–AA00

Safety Zone; Columbia River, The Dalles Lock and Dam

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Columbia River in the vicinity of The Dalles Lock and Dam while the Army Corps of Engineers completes repairs to the lock. The safety zone is necessary to help ensure the safety of workers conducting the repairs as well as the maritime public and will do so by prohibiting all persons and vessels from entering the construction zone.

DATES: This rule is effective in the CFR on December 28, 2010 through April 1, 2011. This rule is effective with actual notice for purposes of enforcement

starting at 6 a.m. on December 10, 2010. This rule will remain in effect through 11:59 p.m. on April 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1109 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1109 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Jeremy Maginot, Waterways Management Division, Coast Guard MSU Portland; telephone 503–247–4004, e-mail *D13-SG-M-msuportlandwwm@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

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** because to do otherwise would be contrary to public interest since the event will have begun by the time the notice could be published and comments taken.

Background and Purpose

The U.S. Army Corps of Engineers will be completing repairs on The Dalles Lock from December 10, 2010 until April 1, 2010. The dangers associated with such a large scale construction project necessitate the establishment of this safety zone to help ensure the safety of the workers conducting the repairs as well as the maritime public.

Discussion of Rule

The safety zone created by this rule covers all waters of the Columbia River encompassed within the area created by a line beginning at the tip of the south wall of The Dalles Lock entrance basin at 45°37′03.4″ N, 121°08′02.6″ W; thence continuing northwest from the south wall of The Dalles Lock entrance basin to the Washington bank at 45°37′06.0″ N, 121°08′06.1″ W; thence continuing southwest along the bank of the Columbia River to the east end of The Dalles Lock; thence across the downstream gate to the south lock wall of The Dalles Lock; thence continuing along the south lock wall of The Dalles Lock and the south wall of The Dalles Lock entrance basin to the starting point at 45°37′03.4″ N, 121°08′02.6″ W. Geographically, this area encompasses The Dalles Lock and the upstream lock entrance basin of The Dalles Lock.

The safety zone will be in effect from 6 a.m. on December 10, 2010 through 11:59 p.m. on April 01, 2011. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port or designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has made this determination based on the fact that the safety zone created by this rule will not significantly affect the maritime public because the area covered has little commercial or recreational activity. In addition, vessels may enter the safety zone with the permission of the Captain of the Port or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule. The safety zone will not have a significant economic impact on a substantial number of small entities because the area covered has little commercial or recreational activity. In addition, vessels may enter the safety zone with the permission of the Captain of the Port or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–173 to read as follows:

§ 165.T13–173 Safety Zone; Columbia River, The Dalles Lock and Dam

(a) *Location.* The following is a safety zone: All waters of the Columbia River encompassed within the area created by a line beginning at the tip of the south wall of The Dalles Lock entrance basin at 45° 37′ 03.4″ N, 121° 08′ 02.6″ W; thence continuing northwest from the south wall of The Dalles Lock entrance basin to the Washington bank at 45° 37′ 06.0″ N, 121° 08′ 06.1″ W; thence continuing southwest along the bank of the Columbia River to the east end of The Dalles Lock; thence across the downstream gate to the south lock wall of The Dalles Lock; thence continuing along the south lock wall of The Dalles Lock and the south wall of The Dalles Lock entrance basin to the starting point at 45° 37′ 03.4″ N, 121° 08′ 02.6″ W. Geographically this area encompasses The Dalles Lock and the upstream lock entrance basin of The Dalles Lock.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or designated representative. Designated representatives are Coast Guard or Army Corps of Engineers personnel designated by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. *See* 33 CFR part 165, subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created in this section will be in effect from 6 a.m. on December 10, 2010 through 11:59 p.m. on April 1, 2011.

Dated: December 9, 2010.

D.E. Kaup

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2010–32544 Filed 12–27–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1098]

RIN 1625–AA00

Safety Zone; Potential Unexploded Ordnance, Pier 91, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing all waters within 100 yards of Pier 90/91 between terminal 89 and the Elliott Bay Marina Breakwater on Elliott Bay in Seattle, Washington. The safety zone is necessary to help ensure the safety of the maritime public due to discarded military munitions discovered in close proximity to Pier 91 and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective in the CFR on December 28, 2010 through April 15, 2011. This rule is effective with actual notice for purposes of enforcement starting at 12:01 a.m. on December 14, 2010. This rule will remain in effect through 11:59 p.m. on April 15, 2011, unless canceled sooner by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1098 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1098 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Ashley Wanzer, Waterways Management Division, Coast Guard Sector Puget Sound; telephone 206–217–6175, e-mail *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

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** because to do otherwise would be contrary to public interest since immediate action is necessary to ensure the safety of the maritime public during the removal of these military munitions.

Basis and Purpose

From April to October 2010, the Port of Seattle discovered discarded military munitions while conducting required routine security dives around pier 90/91 prior to cruise ship arrivals. On eight occasions, divers discovered munitions that date back decades to when the facility was used by the military. Each time, after the items were removed, the Navy and/or Coast Guard determined there was no imminent threat for tenants, cruise terminal operations, and all other commercial vessel operations who utilize the facility. Port police continued to perform routine dives throughout the summer during cruise season.

The U.S. Army Corps of Engineers has designated Pier 90 and 91 as a Formerly Used Defense Site (FUDS) and has assumed responsibility for removal of discarded military munitions from this area.

Discussion of Rule

The safety zone created by this rule encompasses all waters within 100 yards of Pier 90/91 between terminal 89 and the Elliott Bay Marina Breakwater on Elliott Bay in Seattle, Washington. The safety zone can also be described as all waters shoreward of a line extending from Elliot Bay Marina Breakwater at 47–37.646N, 122–23.227W then southeasterly to 47–37.537N, 122–23.015W then east to 47–37.537N, 122–22.767W then northeasterly to 47–37.611N, 122–22.678W. Entry into the safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port or designated representative.

The Army Corps of Engineers is authorized under the authority of the FUDS program to conduct site investigation and time-critical removal action of the submerged munitions at Piers 90 and 91. Therefore, authorized survey operations and contracted divers will be allowed to perform duties associated with the planned ammunition removal during the enforcement of this rule.

The safety zone will be enforced by U.S. Coast Guard personnel. The Captain of the Port may be assisted by other Federal, State, or local agencies as needed.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding based on the fact that the safety zone created by this rule is limited in time and duration. Also, maritime traffic can transit around the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the safety zone during periods of enforcement.

The rule will not have a significant economic impact on a substantial number of small entities, however, because the safety zone created by the rule is limited in time and duration, and maritime traffic can transit around the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Commandant Instruction from further environmental documentation. This rule involves the establishment of a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3707; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13–171 to read as follows:

§ 165.T13–171 Safety Zone; Potential Unexploded Ordinance, Pier 91, Seattle, WA

(a) *Location.* The following area is a safety zone: All waters shoreward of a line extending from Elliott Bay Marina Breakwater at 47–37.646N, 122–23.227W then southeasterly to 47–37.537N, 122–23.015W then east to 47–37.537N, 122–22.767W then

northeasterly to 47–37.611N, 122–22.678W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. *See* 33 CFR part 165, subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created in this section is effective from 12:01 a.m. on December 14, 2010 until 11:59 p.m. on April 15, 2011 unless canceled sooner by the Captain of the Port.

Dated: December 10, 2010.

S.J. Ferguson,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–32543 Filed 12–27–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1082]

RIN 1625–AA00

Safety Zone; Allegheny River, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone extending the entire width of the river between mile markers 0.6 and 0.8 on the Allegheny River. The safety zone is needed to protect the public from the hazards associated with the First Night Pittsburgh fireworks display. Entry into, movement within, and departure from this Coast Guard safety zone, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective from 5:30 p.m. until 6:45 p.m. on December 31, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1082 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1082 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808, e-mail *Robyn.G.Hoskins@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing a NPRM would be impracticable because immediate action is needed to protect the public due to the First Night Pittsburgh fireworks display that will occur in the city of Pittsburgh, PA.

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**. Publishing an NPRM and delaying its effective date would be impracticable based on the short notice received for the event and the short period that the safety zone will be in place. Immediate action is needed to provide safety and protection during the First Night Pittsburgh fireworks display that will occur in the city of Pittsburgh, PA.

Background and Purpose

The First Night Pittsburgh fireworks display is scheduled to take place on December 31, 2010, on the Allegheny River. A safety zone is needed to protect the public from the hazards associated with the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone extending the entire width of the river between mile markers 0.6 and 0.8 on the Allegheny River. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule will be effective from 5:30 p.m. to 6:45 p.m. on December 31, 2010. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit that portion of the waterways between mile markers 0.6 and 0.8 on the Allegheny River, extending the entire width of the river.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for a short period of time, on a weekend day, and during a time when vessel traffic is low.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–1082 to read as follows:

§ 165.T08–1082 Safety Zone; Allegheny River, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All waters of the Allegheny

River, extending the entire width of the river between mile markers 0.6 and 0.8 on the Allegheny River. These markings are based on the USACE's *Allegheny River Navigation Charts* (Chart 1, January 2004).

(b) *Periods of Enforcement.* This rule will only be enforced from 5:30 p.m. through 6:45 p.m. on December 31, 2010. The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: December 6, 2010.

R.V. Timme,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2010–32511 Filed 12–27–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0808; FRL–9243–3]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Sulfur Dioxide SIP Revision for Marathon Petroleum St. Paul Park

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 6, 2009, Minnesota submitted a request for a sulfur dioxide State Implementation Plan revision for Marathon Petroleum in St. Paul Park. This submittal updates the State Implementation Plan to reflect the installation of new boilers and a sulfur recovery unit and changes to three existing heaters. Overall, this update represents a decrease in sulfur dioxide emissions. EPA is approving these revisions under the Clean Air Act.

DATES: This direct final rule will be effective February 28, 2011, unless EPA receives adverse comments by January 27, 2011. 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–2009–0808, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312)408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, 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's 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–2009–0808. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the 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 Mary Portanova, Environmental Engineer, at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@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. Background
II. What has changed in the SIP?
III. Air Quality Analysis
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. Background

On October 6, 2009, Minnesota submitted a site-specific sulfur dioxide (SO_2) State Implementation Plan (SIP) revision request for Marathon Petroleum Co, LLC, (Marathon) in the Saint Paul Park area of Minneapolis-St.Paul, Minnesota. This area had been designated as nonattainment of the SO_2 National Ambient Air Quality Standards (NAAQS) in 1979, but was redesignated to attainment for SO_2 on May 13, 1997 (62 FR 26230), after meeting the requirements of the Clean Air Act and

measuring eight quarters of monitored air quality data below the SO_2 NAAQS. The October 6, 2009 submittal serves to update the SO_2 maintenance plan for St. Paul Park.

Minnesota places its SIP conditions in joint Title I/Title V documents, in the form of State Air Emission Permits. The SIP conditions are listed in the State's documents as Title I conditions, which refers to Title I of the Clean Air Act. The documents also contain Title V permit conditions for the affected facilities. The most recently approved Title I SIP conditions for this Marathon facility (previously known as Marathon Ashland Petroleum LLC) were those which were placed in Minnesota's Air Emission Permit No. 16300003–003. These SIP conditions were Federally approved into Minnesota's SO_2 SIP on May 20, 2002 (67 FR 35437).

The October 6, 2009, SO_2 SIP revision request accounts for several changes since 2002 at the Marathon Petroleum refinery, including the installation of a new sulfur recovery unit, physical changes to three existing heaters, and the installation of two new boilers. These changes were set forth in Air Emission Permits 16300003–006 and 16300003–016. The State requested that EPA approve into the SIP only the permit conditions labeled "Title I Condition: State Implementation Plan for SO_2 NAAQS," and remove all non-SIP-related "Title I Conditions" from the SIP.

II. What has changed in the SIP?

Marathon has planned or implemented several changes to SO_2-emitting units at the St. Paul Park facility since 2002. The company has installed a new sulfur recovery unit at the facility, made changes to three of its heaters, and installed two new boilers. SIP conditions have been altered to represent these new or modified units.

Minnesota's permit action 16300003–006, issued November 5, 2002, authorized Marathon to install a new sulfur recovery unit (SRU) and a Shell Claus off-gas treating (SCOT) tail gas unit. Allowable SO_2 emissions from the new Number 3 SRU are restricted to 15 lb/hr (on a 3-hour average) and 39 tons per year (tpy). A continuous emissions monitor (CEM) will be used to measure SO_2 emissions from the units.

Under the same permit action, Marathon made physical changes to two heaters. Changes to the Hot Oil Heater (EU016, 5–34–B–2) only affected its stack dispersion characteristics, but did not change its SO_2 emission limit. Changes to the Number 2 Crude Charge Heater (EU006, 5–2–B–3) included the replacement of its burners with low-nitrogen oxides burners and the replacement of its convection sections and stack. These changes removed the heater's ability to burn refinery fuel oil. Permit action 16300003–006 primarily discussed reductions in the emissions of nitrogen oxides from this heater and did not address the effect on SO_2 of removing refinery fuel oil. The revised permit allows only natural gas and refinery fuel gas for this heater, but the SO_2 limits for the Number 2 Crude Charge Heater remain unchanged at 34 lb/hr and 0.2834 lb/MMBTU.

In 2007, Marathon replaced the burner in the Heavy Distillate Hydrotreater Charge Heater (EU017). With the new burner, this heater can no longer combust refinery fuel oil. In permit action 16300003–016, issued on September 11, 2009, EU017 was restricted to natural gas and refinery fuel gas only, and its SO_2 SIP emission limit was reduced accordingly, from 66.6 lb/hr to 2.97 lb/hr. This represents a 279 tpy reduction in allowable SO_2 emissions. In addition, some former SIP testing and recordkeeping requirements relating to the use of refinery fuel oil have been removed for this heater.

Permit action 16300003–016 also allows two new boilers to be installed at the Marathon facility. The new boilers, Boiler 92 (EU092) and Boiler 93 (EU093), are limited to 0.025 lb/MMBtu of SO_2, and are only permitted to use natural gas or refinery fuel gas. The new boilers' 7.2 lb/hr (31.5 tpy) emissions increase will be offset by the shutdown of three other boilers at the facility: Boiler 5 (EU001), Boiler 4 (EU020) and Boiler 6 (EU021). The permit provides that Boilers 4, 5, and 6 must be shut down 180 days after the new boilers begin operating or 60 days after both new boilers achieve maximum operating rate, whichever comes first. Boilers 92 and 93 are not allowed to begin operating until EPA has approved their SIP limits. Boilers 4 and 6 are allowed to use either natural gas, refinery fuel gas, or refinery fuel oil. Boiler 5 can only use natural gas or refinery fuel gas. Their shutdown will bring a 323 tpy reduction in allowable SO_2 emissions.

III. Air Quality Analysis

The SO_2 source configuration and emission limit changes in permits 16300003–006 and 16300003–016 were evaluated using air dispersion modeling. Modeling analyses were performed when the Number 3 SRU and Boiler 92 and 93 installations were originally permitted (2002 and 2009). These analyses were submitted as part of the October 6, 2009 SIP revision request. Because EPA's air quality modeling recommendations have changed since 2002, the analyses were not both performed using the same dispersion model.

Modeling for the Number 3 SRU installation and the physical changes to heaters EU006 and EU016 was performed in 2002, using the ISCST3 model, which was the EPA-recommended model at the time. The predicted SO_2 concentrations for the Marathon facility and neighboring SO_2 sources, including a background concentration, were below the SO_2 NAAQS.

Modeling for the Boiler 92 and 93 installation and the emission limit reductions for heater EU017 was performed in 2009, using the EPA recommended dispersion model, AERMOD, version 07026. This modeling included all sources at the Marathon facility, and served to replace the 2002 modeling analysis. Both the new boilers (EU092 and EU093) and the existing boilers (EU001, EU020, and EU021) were included in the modeling, although Marathon's permit requires the three existing boilers to be shut down 180 days after the two new boilers begin operating. SO_2 emissions from neighboring facilities were also included in the modeling. The 2009 AERMOD dispersion modeling used five years of meteorological data from 1986–1990. Surface meteorological data was measured at Minneapolis-St. Paul, MN, and upper air data was measured at St. Cloud, MN. The modeling used a receptor grid with 100 meter resolution. The resulting modeled SO_2 concentrations, including a representative background SO_2 concentration, were below the SO_2 NAAQS.

On June 22, 2010, EPA published final revisions to the SO_2 NAAQS, which added a one-hour standard (75 FR 35520). The SIP actions for the Marathon facility and the accompanying air quality analyses were finalized and the SIP revision request was submitted to EPA before EPA had proposed the new SO_2 NAAQS (December 8, 2009; 74 FR 64810). Given the timing of this SIP revision request, and the fact that it represents an overall decrease in SO_2 emissions, EPA finds that the October 6, 2009 submittal is complete and will not adversely affect Minnesota's ability to attain and maintain the one-hour SO_2 standard.

IV. What action is EPA taking?

EPA is approving Minnesota's October 6, 2009 site-specific SO_2 SIP revision request for Marathon Petroleum Co, LLC, in the Saint Paul Park area of Minneapolis-St.Paul, Minnesota. 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 February 28, 2011 without further notice unless we receive relevant adverse written comments by January 27, 2011. 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. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective February 28, 2011.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 February 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 15, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by updating the entry for "Marathon Ashland Petroleum, LLC" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
*	*	*	*	*
Marathon Petroleum, LLC.	16300003–016	09/11/09	12/28/10, [Insert page number where the document begins].	Only conditions cited as "Title I condition: SIP for SO_2 NAAQS."
*	*	*	*	*

* * * * *

[FR Doc. 2010–32482 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV103–6041; FRL–9240–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by West Virginia that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC and the Regional Office.

DATES: *Effective Date:* This action is effective December 28, 2010.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and NARA. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742; or NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903) and February 10, 2009 (74 FR 6542), EPA published updates to the IBR material in West Virginia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the IBR materials in paragraph 52.2520(c):

1. Addition of Regulation 45 CSR 39.

2. Revisions to the following regulations: 45 CSR 6, 45 CSR 8, 45 CSR 40, and 45 CSR 41.

3. Removal of the following regulations: 45 CSR 1, 45 CSR 9, 45 CSR 12, and 45 CSR 26.

II. EPA Action

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of November 1, 2010.

2. Making corrections to the following entries listed in the paragraph 52.2520(c) chart, as described below:

a. 45 CSR 6—removing text from the "Additional explanation/citation at 40 CFR § 52.2565" column.

b. 45 CSR 7—revising the dates in the State effective date column so that the date format is consistent with that found throughout the paragraph.

c. 45 CSR 21—reinstating section 45 CSR 45–21–36, which had been inadvertently removed from this paragraph. On February 1, 1995, (60 FR 6022), EPA approved 45 CSR 21, Section 36 as part of the West Virginia SIP.

d. 45 CSR 39—Correcting the regulation title of section 45–39–15 in the "Title/subject" column.

e. 45 CSR 41—correcting the regulation title to read "Control of Annual Sulfur Dioxides Emissions."

3. In paragraph 52.2420(e), correcting the date format in the "EPA approval date column" for the entry entitled "State of West Virginia Transportation Conformity Requirements."

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and correcting non-substantive errors in the table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 daysof such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization update action for West Virginia.

List of Subjects in 40 CFR Part 52

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

Dated: December 3, 2010.

W. C. Early,

Acting, Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by:

■ a. Revising paragraph (b),

■ b. Amending paragraph (c) as follows:

■ i. Revising all entries for [45 CSR] Series 6 and [45 CSR] Series 7.

■ ii. Adding an entry for Section 45–21–36.

■ iii. Revising the entry for Section 45–39–15 and the Title for [45 CSR] Series 41.

■ c. In paragraph (e), revising the entry for State of West Virginia Transportation Conformity Requirements.

The amendments read as follows:

§ 52.2520 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after November 1, 2010 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations and source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations and source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2010.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA-approved regulations.

EPA–APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
* *	*	*	*	* *
[45 CSR] Series 6	**To Prevent and Control Air Pollution From Combustion of Refuse**			
Section 45–6–1	General	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–2	Definitions	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–3	Open Burning Prohibited	6/1/08	3/25/09, 74 FR 12560.	

EPA–APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–6–4	Emission Standards for Incinerators and Incineration.	6/1/08	3/25/09, 74 FR 12560.	Deleted paragraphs 4.8, and 4.8.a through 4.8.d; Added paragraphs 4.9 and 4.10.
Section 45–6–5	Registration	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–6	Permits	6/1/08	3/25/09, 74 FR 12560.	Added paragraph 6.2.
Section 45–6–7	Reports and Testing	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–8	Variances	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–9	Emergencies and Natural Disasters.	6/1/08	3/25/09, 74 FR 12560.	Added paragraphs 9.1.c, 9.2, and 9.2.a through 9.2.c.
Section 45–6–10	Exemptions	6/1/08	3/25/09, 74 FR 12560.	New Section.
Section 45–6–11	Effect of the Rule	6/1/08	3/25/09, 74 FR 12560.	Recodified—formerly section 45–6–10.
Section 45–6–12	Inconsistency Between Rules	6/1/08	3/25/09, 74 FR 12560.	Recodified—formerly section 45–6–11.
[45 CSR] Series 7	**To Prevent and Control Particulate Matter Air Pollution From Manufacturing Process Operations**			
Section 45–7–1	General	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–2	Definitions	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–4	Control and Prohibition of Particulate Emissions by Weight from Manufacturing Process Source Operations.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–5	Control of Fugitive Particulate Matter.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–6	Registration	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–7	Permits	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–8	Reporting and Testing	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–9	Variance	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–10	Exemptions	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–11	Alternative Emission Limits for Duplicate Source Operations..	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–12	Inconsistency Between Rules.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
TABLE 45–7A, TABLE 45–7B	[Maximum Allowable Emission Rates From Sources Governed by 45 CFR Series 7].	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
* *	* *	*	*	*
[45 CSR] Series 21	**Regulation To Prevent And Control Air Pollution From The Emission Of Volatile Organic Compounds**			
* *	* *	*	*	*
Section 45–21–36	Perchlorethylene Dry Cleaning	7/7/93	2/1/95 60 FR 6022.	(c)(33).

EPA–APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
* *	*	*	*	* *
[45 CSR] Series 39	**Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides**			
* *	*	*	*	* *
Section 45–39–15	Delegation by CAIR Designated Representative and Alternate CAIR Designated Representative.	5/1/08	8/4/09, 74 FR 38536.	
* *	*	*	*	* *
[45 CSR] Series 41	**Control of Annual Sulfur Dioxides Emissions**			
* *	*	*	*	* *

* * * * *

(e) EPA-approved nonregulatory and quasi-regulatory material.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
State of West Virginia Transportation Conformity Requirements.	Entire State	04/12/07	5/2/08, 73 FR 24175.	Memoranda of Understanding between EPA, FHWA, FTA, State of West Virginia, and six Metropolitan Planning Organizations.

[FR Doc. 2010–32452 Filed 12–27–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0073; FRL–9243–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of amendments to the Commonwealth of Virginia's ambient air quality standards for particulate matter (PM). This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on January 27, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0073. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 17, 2008 (73 FR 67825), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of amendments to the Commonwealth's existing ambient air quality standards for particulate matter in 9VAC5 Chapter 30. The formal SIP revision was submitted by the Commonwealth of Virginia on January 7, 2008. EPA received no comments on the proposal to approve Virginia's SIP revision. However, regulation 9VAC5–30–65E included an incorrect reference of the **Federal Register** document for the annual and 24-hour $PM_{2.5}$ NAAQS that were established by the EPA on July 18, 1997 as 62 FR 28856 instead of 62 FR 38652. On September 29, 2010, EPA received a correction to the regulation (9VAC5 Chapter 30) that contains the ambient air quality standards set out in 40 CFR 50. The SIP revision made the necessary correction to reference the **Federal Register** document appropriately.

II. Summary of SIP Revision

The Commonwealth's SIP revision to the Virginia Regulations for the Control

and Abatement of Air Pollution: 9VAC5 Chapter 30—Ambient Air Quality Standards incorporates the annual and 24-hour $PM_{2.5}$ national ambient air quality standards that were established by the EPA on July 18, 1997 and on October 17, 2006. The revision is consistent with the national ambient air quality standards. The SIP revision amends the $PM_{2.5}$ standard to add the new 24-hour standard of 35 $\mu g/m^3$, retains the current 24-hour standard of 65 $\mu g/m^3$ during the transition to the new standard, adds transitional language to clarify implementation of these standards, and removes obsolete language referencing the annual PM_{10} standard. The SIP revision also adds new reference conditions.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the amendments to the existing air quality standards for particulate matter in 9VAC5 Chapter 30 as a revision to the Virginia SIP.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that

it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 February 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, amending ambient air quality standards for particulate matter, 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 14, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for 5–30–60 and 5–30–65, and adding entries 5–30–15 and 5–30–66 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9VAC5, Chapter 30	**Ambient Air Quality Standards [Part III]**			
*	*	*	*	*
5–30–15	Reference Conditions	8/1/07	12/28/10 [Insert page number where the document begins].	Added section.
*	*	*	*	*
5–30–60	Particulate Matter (PM_{10})	8/1/07	12/28/10 [Insert page number where the document begins].	Removed PM_{10} annual standard.
5–30–65	Particulate Matter ($PM_{2.5}$)	8/1/07	12/28/10 [Insert page number where the document begins].	Removed PM_{10} standard.
5–30–66	Particulate Matter ($PM_{2.5}$)	8/1/07	12/28/10 [Insert page number where the document begins].	Added section.
*	*	*	*	*

* * * * *

[FR Doc. 2010–32487 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0857; FRL–9243–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture; Flat Wood Paneling; Paper, Film, and Foil Surface Coating Processes; and Revisions to Definitions and an Existing Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP). These SIP revisions include amendments to the Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control, and meet the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. These amendments will reduce emissions of volatile organic compounds (VOC) from large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. Therefore, this revision will help Pennsylvania attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on February 28, 2011 without further notice, unless EPA receives adverse written comment by January 27, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0857 by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0857, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0857. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105 or the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 23, 2010, the Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA a SIP revision concerning the adoption of the EPA CTGs for large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

CTGs are intended to provide State and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, including large appliance coatings, metal furniture coatings, flat wood paneling coatings, and paper, film, and foil coatings. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provided recommendations for RACT for VOCs from large appliance coatings, metal furniture coatings, flat wood paneling coatings, and paper, film, and foil coatings.

In December 1977, EPA published CTGs for large appliance coatings (EPA–450/2–77–034), surface coating of metal furniture (EPA–450/2–77–032), and surface coating of paper (EPA–450/2–77–008). In June 1978, EPA published a CTG for flat wood paneling coatings (EPA–450/2–78–034). These CTGs discuss the nature of VOC emissions from these industries, available control

technologies for addressing such emissions, the costs of available control options, and other items.

EPA promulgated national standards of performance for new stationary sources (NSPS) for the industries listed above, and EPA also published a national emission standard for hazardous air pollutants (NESHAP) for these industries.

In 2006 and 2007, after conducting a review of currently existing State and local VOC emission reduction approaches for these industries, reviewing the 1977/1978 CTGs and the NESHAPs for these industries, and taking into account the information that has become available since then, EPA developed new CTGs for: Surface coating of large appliances, entitled *Control Techniques Guidelines for Large Appliance Coatings* (Publication No. EPA 453/R–07–004; September 2007); surface coating of paper, entitled *Control Techniques Guidelines for Paper, Film, and Foil Coatings* (Publication No. EPA 453/R–07–003; September 2007); surface coating of metal furniture, entitled *Control Techniques Guidelines for Metal Furniture Coatings* (Publication No. EPA 453/R–07–005; September 2007); and surface coating of flat wood paneling, entitled *Control Techniques Guidelines for Flat Wood Paneling Coatings* (Publication No. EPA 453/R–06–004).

Large appliance coatings include, but are not limited to, materials referred to as paint, topcoats, basecoats, primers, enamels, and adhesives used in the manufacture of large appliance parts or products. Coatings are a critical constituent to the large appliance industry. The metal furniture coatings product category includes the coatings that are applied to the surfaces of metal furniture. Metal furniture coatings serve decorative, protective, and functional purposes. Flat wood paneling coatings means wood paneling products that are any interior, exterior or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied. Emissions of VOCs from flat wood coating facilities occur primarily at the coating line, although some emissions also occur at paint mixing and storage areas. The paper, film, and foil product category includes coatings that are applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry sectors: Pressure sensitive tape and labels; photographic film; industrial and decorative laminates; abrasive products; and flexible packaging. The category also includes coatings applied during miscellaneous coating operations for several products including: Corrugated and solid fiber boxes; die-cut paper paperboard and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic asceptic packaging; and carbon paper and inked ribbons. VOC emissions from large appliance, metal furniture, flat wood paneling, and paper, film, or foil surface coating processes result from the evaporation of the components of the coatings and cleaning materials.

II. Summary of SIP Revision

On July 23, 2010, the Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA a SIP revision concerning the adoption of the EPA CTGs for large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes in Allegheny County. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. Allegheny County has adopted EPA's CTG standards into ACHD Rules and Regulations, Article XXI, Air Pollution Control, section 2105.77 for large appliance and metal furniture; section 2105.78 for flat wood paneling; and section 2105.79 for paper, film, and foil surface coating processes (*see* EPA 453/R–07–004, September 2007; EPA 453/R–07–003, September 2007; EPA 453/R–07–005, September 2007; EPA 453/R–06–004). Additionally, the SIP revision included revisions to an existing regulation (section 2105.10) for surface coating processes and related definitions (section 2101.20). This action affects sources that use large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes in Allegheny County.

New regulation, section 2105.77, Control of VOC Emissions from Large Appliance and Metal Furniture Surface Coating Processes establishes the following emissions limits of VOCs for Large Appliance and Metal Surface Coatings:

TABLE 2105.77—EMISSIONS LIMITS OF VOCS FOR LARGE APPLIANCE AND METAL SURFACE COATINGS

[Weight of VOC per volume of coating solids]

Surface coating process category	Baked		Air dried	
	kg/l	lb/gal	kg/l	lb/gal
1. Large Appliance coating:	0.40	3.3	0.40	3.3
(a) general, one component	0.40	3.3	0.55	4.5
(b) general, multi-component	0.55	4.62	0.55	4.62
(c) extreme high gloss	0.55	4.62	0.55	4.62
(d) extreme performance	0.55	4.62	0.55	4.62
(e) heat resistant	0.55	4.62	0.55	4.62
(f) metallic	0.55	4.62	0.55	4.62
(g) pretreatment coatings	0.55	4.62	0.55	4.62
(h) solar absorbent	0.55	4.62	0.55	4.62
2. Metal Furniture coating:	0.40	3.3	0.40	3.3
(a) general, one component	0.40	3.3	0.55	4.5
(b) general, multi-component	0.61	5.06	0.55	4.5
(c) extreme high gloss	0.61	5.06	0.61	5.06
(d) extreme performance	0.61	5.06	0.61	5.06
(e) heat resistant	0.61	5.06	0.61	5.06
(f) metallic	0.61	5.06	0.61	5.06
(g) pretreatment coatings	0.61	5.06	0.61	5.06
(h) solar absorbent	0.61	5.06	0.61	5.06

Additionally, the regulation outlines applicability, limitations, exempt solvents, application techniques, and work practices.

New regulation, section 2105.78, Control of VOC Emissions from Flat Wood Paneling Coating Processes establishes the following emissions limits of VOCs: The VOC content of each as applied coating is equal to or less than 2.9 lbs. VOC per gallon of coating solids (0.35 kg VOC per liter of coating solids). Additionally, the regulation outlines applicability, limitations, records, exempt solvents, application techniques, and work practices.

New regulation, section 2105.79, Control of VOC Emissions from Paper, Film, and Foil Surface Coating operations establishes the following emissions limits of VOC:

TABLE 2105.79—EMISSIONS LIMITS OF VOCS FOR PAPER, FILM, AND FOIL SURFACE COATINGS

[Weight of VOC per weight of solids or coating applied]

Surface coating process category	Solids applied kg VOC/kg solids	Coating applied kg VOC/kg coatings
Pressure Sensitive Tape and Label	0.20	0.067
Paper, Film, and Foil (Not including pressure sensitive tape and labels)	0.40	0.08

Additionally, the regulation outlines applicability, limitations, records, exempt solvents, application techniques, and work practices.

In addition to adopting the CTGs discussed above, definitions arising from these CTG regulations were added to Article XXI (section 2101.20) and are being added to the Allegheny County portion of the Pennsylvania SIP. Definitions were added for exterior panels, interior panels, flat wood panel coating, and tileboard.

Changes were also made to an existing regulation, section 2105.10, Surface Coating Processes, making outdated limits for sources covered by these CTG regulations void after January 1, 2011. The specific language added is as follows:

1. The limits from section 2105.10 and Table section 2105.10, number 7 for metal furniture coating and number 9 for large appliance coating, no longer apply to the large appliance and metal furniture surface coating process as of January 1, 2011.

2. The limits from section 2105.10 and Table section 2105.10, number 5 for Paper coating, no longer apply to the paper, film, and foil surface coating process as of January 1, 2011.

III. Final Action

Pennsylvania's July 23, 2010 SIP revision meets the CAA requirement to include RACT for sources covered by the EPA CTGs for the following categories in Allegheny County: Large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. Therefore, EPA is approving the Pennsylvania SIP revision for adoption of the CTG standards for large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2011 without further notice unless EPA receives adverse comment by January 27, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct

costs on Tribal governments or preempt Tribal law.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 February 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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 pertaining to Allegheny County's adoption of the CTG standards for large appliance and metal furniture, flat wood paneling, and paper, film, and foil surface coating processes 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 14, 2010.

W.C. Early,

Acting, Regional Administrator, Region III.

■ 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by revising the entries for Article XXI, Sections 2101.20 and 2105.10, and adding entries for Article XXI, Sections 2105.77, 2105.78, 2105.79 to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Part A—General				
*	*	*	*	*
2101.20	Definitions	5/24/10	12/28/10 [Insert page number where the document begins]	Addition of four new definitions: Exterior panels, interior panels, flat wood panel coating, and tileboard.
*	*	*	*	*
Part E—Source Emission and Operating Standards				
*	*	*	*	*
Subpart 1—VOC Sources				
*	*	*	*	*
2105.10	Surface Coating Processes.	5/24/10	12/28/10 [Insert page number where the document begins].	Revision to *Applicability,* section 2105.10(a).
Subpart 7—Miscellaneous VOC Sources				
*	*	*	*	*
2105.77	Control of VOC Emissions from Large Appliance and Metal Furniture Surface Coating Processes.	5/24/10	12/28/10 [Insert page number where the document begins]	New Regulation.
2105.78	Control of VOC Emissions from Flat Wood Paneling Coating Processes.	5/24/10	12/28/10 [Insert page number where the document begins]	New Regulation.

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
2105.79	Control of VOC Emissions from Paper, Film, and Foil Surface Coating Processes.	5/24/10	12/28/10 [Insert page number where the document begins]	New Regulation.
*	*	*	*	* * *

* * * * *

[FR Doc. 2010–32488 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0012; FRL–9243–1]

Approval and Promulgation of Implementation Plans; Texas; Emissions Banking and Trading of Allowances Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On November 16, 2010 (75 FR 69884), EPA published a direct final rule approving portions of four revisions to the Texas State Implementation Plan (SIP) that create and amend the Emissions Banking and Trading of Allowances (EBTA) Program. The EBTA Program establishes a cap and trade program to reduce emissions of oxides of nitrogen (NO_X) and sulfur dioxide (SO_2) from participating electric generating facilities in Texas. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if we received relevant, adverse comments by December 16, 2010, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received timely adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address all relevant, adverse comments submitted by December 16, 2010, in a subsequent final action based on the parallel proposal also published on November 16, 2010 (75 FR 69909). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on November 16, 2010 (75 FR 69884), is withdrawn as of December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

List of Subjects in 40 CFR Part 52

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

Dated: December 15, 2010.

Al Armendariz,

Regional Administrator, EPA Region 6.

■ Accordingly, the amendments to 40 CFR 52.2270 published in the **Federal Register** on November 16, 2010 (75 FR 69884), which were to become effective on January 18, 2011, are withdrawn.

[FR Doc. 2010–32458 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the

minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Madison (FEMA Docket No.: B–1121).	Unincorporated areas of Madison County (09–04–6850P).	February 12, 2010; February 19, 2010; *Madison County Record*.	The Honorable Mike Gillespie, Chairman, Madison County Commission, Courthouse 700, 100 Northside Square, Huntsville, AL 35801.	June 21, 2010	010151
Arizona: Maricopa (FEMA Docket No.: B–1118).	City of Surprise (09–09–2388P).	March 11, 2010; March 18, 2010; *Arizona Business Gazette*.	The Honorable Lyn Truitt, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	February 25, 2010	040053
Maricopa (FEMA Docket No.: B–1118).	Unincorporated areas of Maricopa County (09–09–2388P).	March 11, 2010; March 18, 2010; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	February 25, 2010	040037
California: Riverside (FEMA Docket No.: B–1123).	City of Riverside (09–09–1506P).	March 10, 2010; March 17, 2010; *The Press-Enterprise*.	The Honorable Ronald O. Loveridge, Mayor, City of Riverside, 3900 Main Street, Riverside, CA 92522.	February 26, 2010	060260
Colorado:					
Arapahoe (FEMA Docket No.: B–1121).	City of Englewood (10–08–0001P).	February 25, 2010; March 5, 2010; *The Denver Post*.	The Honorable Jim Woodward, Mayor, City of Englewood, 1000 Englewood Parkway, Englewood, CO 80110.	February 18, 2010	085074
Arapahoe (FEMA Docket No.: B–1121).	City of Sheridan (10–08–0001P).	February 25, 2010; March 5, 2010; *The Denver Post*.	The Honorable Dallas Hall, Mayor, City of Sheridan, 4101 South Federal Boulevard, Sheridan, CO 80110.	February 18, 2010	080018
Connecticut: Hartford (FEMA Docket No.: B–1129).	Town of Windsor Locks (09–01–0574P).	November 13, 2009; November 20, 2009; *Hartford Courant*.	The Honorable Steven N. Wawruck, Jr., First Selectman, 50 Church Street, Windsor Locks, CT 06096.	November 4, 2009	090042
Florida:					
Alachua (FEMA Docket No.: B–1118).	Unincorporated areas of Alachua County (09–04–5275P).	March 16, 2010; March 22, 2010; *The Gainesville Sun*.	The Honorable Cynthia Moore Chestnut, Chairman, Alachua County Board of Commissioners, P.O. Box 2877, Gainesville, FL 32602.	February 26, 2010	120001
Lee (FEMA Docket No.: B–1121).	City of Bonita Springs (09–04–3113P).	February 10, 2010; February 17, 2010; *Fort Myers News-Press*.	The Honorable Ben L. Nelson, Jr., Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	June 17, 2010	120680
Miami-Dade (FEMA Docket No.: B–1123).	City of Sunny Isles Beach (09–04–8292P).	March 15, 2010; March 22, 2010; *Miami Daily Business Review*.	The Honorable Norman S. Edelcup, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Suite 250, Sunny Isles Beach, FL 33160.	February 26, 2010	120688
Monroe (FEMA Docket No.: B–1118).	Unincorporated areas of Monroe County (09–04–8247P).	March 8, 2010; March 15, 2010; *Key West Citizen*.	The Honorable Sylvia Murphy, Mayor, Monroe County, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	February 26, 2010	125129
Polk (FEMA Docket No.: B–1121).	Unincorporated areas of Polk County (09–04–5686P).	February 10, 2010; February 17, 2010; *The Polk County Democrat*.	The Honorable Bob English, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	June 17, 2010	120261
Seminole (FEMA Docket No.: B–1118).	City of Lake Mary (10–04–0356P).	March 5, 2010; March 12, 2010; *Orlando Sentinel*.	The Honorable David Mealor, Mayor, City of Lake Mary, P.O. Box 958445, Lake Mary, FL 32795.	February 24, 2010	120416

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Volusia (FEMA Docket No.: B–1129).	City of DeLand (09–04–0784P).	November 9, 2009; November 16, 2009; *The Beacon*.	The Honorable Robert F. Apgar, Mayor, City of DeLand, 120 South Florida Avenue, DeLand, FL 32720.	March 16, 2010	120307
Volusia (FEMA Docket No.: B–1129).	Unincorporated areas of Volusia County (09–04–0784P).	November 9, 2009; November 16, 2009; *The Beacon*.	The Honorable Frank Bruno, Chair, Volusia County Council, Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, FL 32720.	March 16, 2010	125155
Georgia:					
Clayton (FEMA Docket No.: B–1123).	City of Morrow (09–04–4735P).	February 12, 2010; Februrary 19, 2010; *Clayton News Daily*.	The Honorable Jim Millirons, Mayor, City of Morrow, 1500 Morrow Road, Morrow, GA 30260.	June 21, 2010	130045
Cobb (FEMA Docket No.: B–1123).	City of Smyrna (09–04–6852P).	March 12, 2010; March 19, 2010; *Marietta Daily Journal*.	The Honorable A. Max Bacon, Mayor, City of Smyrna, 2800 King Street, Smyrna, GA 30080.	February 26, 2010	130057
Cobb (FEMA Docket No.: B–1123).	Unincorporated areas of Cobb County (09–04–6852P).	March 12, 2010; March 19, 2010; *Marietta Daily Journal*.	The Honorable Samuel S. Olens, Chairman, Cobb County Board of Commissioners, 100 Cherokee Street, Marietta, GA 30090.	February 26, 2010	130052
Douglas (FEMA Docket No.: B–1121).	Unincorporated areas of Douglas County (09–04–6891P).	February 5, 2010; February 12, 2010; *Douglas County Sentinel*.	The Honorable Tom Worthan, Douglas County Chairman, 8700 Hospital Drive, Douglasville, GA 30134.	June 14, 2010	130306
Fulton (FEMA Docket No.: B–1123).	City of Atlanta (09–04–6852P).	March 12, 2010; March 19, 2010; *Fulton Daily Report*.	The Honorable Kasim Reed, Mayor, City of Atlanta, 55 Trinity Avenue, Atlanta, GA 30303.	February 26, 2010	135160
Gwinnett (FEMA Docket No.: B–1129).	City of Buford (09–04–5712P).	March 11, 2010; March 18, 2010; *Gwinnett Daily Post*.	The Honorable Phillip Beard, Chairman, City of Buford Board of Commissioners, 2300 Buford Highway, Buford, GA 30518.	March 29, 2010	130323
Idaho: Teton (FEMA Docket No.: B–1118).	Unincorporated areas of Teton County (09–10–0567P).	February 18, 2010; February 25, 2010; *Teton Valley News*.	The Honorable Larry Young, Chairman, Teton County Board of Commissioners, 150 Courthouse Drive, Driggs, ID 83422.	June 25, 2010	160230
Kansas: Johnson (FEMA Docket No.: B–1118).	City of Overland Park (09–07–1561P).	March 10, 2010; March 17, 2010; *The Johnson County Sun*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	February 26, 2010	200174
Kentucky:					
Lexington-Fayette Urban County Government (FEMA Docket No.: B–1121).	Lexington-Fayette Urban County Government (09–04–2657P).	February 12, 2010; February 19, 2010; *Lexington Herald-Leader*.	The Honorable Jim Newberry, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	June 21, 2010	210067
Lexington-Fayette Urban County Government (FEMA Docket No.: B–1118).	Lexington-Fayette Urban County Government (09–04–6917P).	March 15, 2010; March 22, 2010; *Lexington Herald-Leader*.	The Honorable Jim Newberry, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington, KY 40507.	March 29, 2010	210067
Massachusetts:					
Barnstable (FEMA Docket No.: B–1129).	Town of Falmouth (09–01–1270P).	November 6, 2009; November 13, 2009; *The Enterprise*.	Mr. Robert L. Whritenour, Jr., Town of Falmouth, Manager, 59 Town Hall Square, Falmouth, MA 02540.	October 30, 2009	255211
Barnstable (FEMA Docket No.: B–1129).	Town of Falmouth (10–01–0479P).	January 8, 2010; January 15, 2010; *The Enterprise*.	Mr. Robert L. Whritenour, Jr., Town of Falmouth, Manager, 59 Town Hall Square, Falmouth, MA 02540.	December 31, 2009	255211
Missouri:					
Cass (FEMA Docket No.: B–1121).	City of Peculiar (09–07–1059P).	February 11, 2010; February 18, 2010; *The Journal*.	The Honorable Ernie Jungmeyer, Mayor, City of Peculiar, 908 Kendall Road, Peculiar, MO 64078.	June 18, 2010	290878
Cass (FEMA Docket No.: B–1121).	Unincorporated areas of Cass County (09–07–1059P).	February 11, 2010; February 18, 2010; *The Journal*.	The Honorable Gary Mallory, Cass County Presiding Commissioner, 102 East Wall Street, Harrisonville, MO 64701.	June 18, 2010	290783
New Mexico: Dona Ana (FEMA Docket No.: B–1121).	City of Las Cruces (09–06–0638P).	February 5, 2010; February 12, 2010; *Las Cruces Sun-News*.	The Honorable Ken Miyagishima, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004.	June 14, 2010	355332
North Carolina:					
Cumberland (FEMA Docket No.: B–1121).	City of Fayetteville (09–04–2351P).	February 5, 2010; February 12, 2010; *Fayetteville Observer*.	The Honorable Anthony G. Chavonne, Mayor, City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301.	June 14, 2010	370077
Durham (FEMA Docket No.: B–1118).	City of Durham (08–04–3771P).	February 24, 2010; March 3, 2010; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	July 1, 2010	370086
Durham (FEMA Docket No.: B–1121).	City of Durham (09–04–4161P).	February 5, 2010; February 12, 2010; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	January 29, 2010	370086

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Forsyth (FEMA Docket No.: B–1123).	City of Winston-Salem (09–04–7422P).	January 5, 2010; January 12, 2010; *Winston-Salem Journal*.	The Honorable Allen Joines, Mayor, City of Winston-Salem, P.O. Box 2511, Winston-Salem, NC 27102.	May 12, 2010	375360
Guilford (FEMA Docket No.: B–1123).	City of Greensboro (09–04–6072P).	November 30, 2009; December 7, 2009; *Greensboro News & Record*.	The Honorable Yvonne J. Johnson, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	April 6, 2010	375351
McDowell (FEMA Docket No.: B–1123).	Unincorporated areas of McDowell County (09–04–1274P).	January 22, 2010; January 29, 2010; *The McDowell News*.	Mr. Charles Abernathy, McDowell County Manager, 60 East Court Street, Marion, NC 28752.	June 1, 2010	370148
Orange (FEMA Docket No.: B–1123).	Town of Carrboro (09–04–7185P).	November 20, 2009; November 27, 2009; *Chapel Hill Herald*.	The Honorable Mark Chilton, Mayor, Town of Carrboro, 301 West Main Street, Carrboro, NC 27510.	March 29, 2010	370275
Orange (FEMA Docket No.: B–1123).	Town of Chapel Hill (08–04–4997P).	December 9, 2009; December 16, 2009; *Chapel Hill Herald*.	The Honorable Kevin Foy, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	April 15, 2010	370180
Wake (FEMA Docket No.: B–1121).	Town of Cary (09–04–4769P).	February 24, 2010; March 3, 2010; *The Cary News* and *The News & Observer*.	The Honorable Harold Weinbrecht, Mayor, Town of Cary, P.O. Box 8005, Cary, NC 27512.	July 1, 2010	370238
Wake (FEMA Docket No.: B–1121).	Town of Morrisville (09–04–4769P).	February 24, 2010; March 3, 2010; *The News & Observer*.	The Honorable Jan Faulkner, Mayor, Town of Morrisville, 100 Town Hall Drive, Morrisville, NC 27560.	July 1, 2010	370242
Wake (FEMA Docket No.: B–1123).	City of Raleigh (09–04–4425P).	January 20, 2010; January 27, 2010; *The News & Observer*.	The Honorable Charles Meeker, Mayor, City of Raleigh, P.O. Box 590, 222 West Hargett Street, Raleigh, NC 27602.	May 27, 2010	370243
Wake (FEMA Docket No.: B–1123).	Unincorporated areas of Wake County (08–04–4911P).	November 30, 2009; December 7, 2009; *The News & Observer*.	Mr. David C. Cooke, Wake County Manager, 337 South Salisbury Street, Suite 1100, Raleigh, NC 27602.	April 6, 2010	370368
Texas:					
Tarrant (FEMA Docket No.: B–1129).	City of Benbrook (09–06–1461P).	February 9, 2010; February 16, 2010; *Star-Telegram*.	The Honorable Jerry Dittrich, Mayor, City of Benbrook, P.O. Box 26569, Benbrook, TX 76126.	June 16, 2010	480586
Tarrant (FEMA Docket No.: B–1129).	City of Blue Mound (09–06–1669P).	January 29, 2010; February 5, 2010; *Star-Telegram*.	The Honorable Alan Hooks, Mayor, City of Blue Mound, 301 South Blue Mound Road, Blue Mound, TX 76131.	June 7, 2010	480587
Tarrant (FEMA Docket No.: B–1129).	City of Colleyville (09–06–2624P).	November 18, 2009; November 25, 2009; *Colleyville Courier*.	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	November 5, 2009	480590
Tarrant (FEMA Docket No.: B–1129).	City of Fort Worth (09–06–1461P).	February 9, 2010; February 16, 2010; *Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Steet, Fort Worth, TX 76102.	June 16, 2010	480596
Tarrant (FEMA Docket No.: B–1129).	City of Fort Worth (09–06–1669P).	January 29, 2010; February 5, 2010; *Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	June 7, 2010	480596
Tarrant (FEMA Docket No.: B–1129).	City of Grapevine (09–06–2624P).	November 18, 2009; November 25, 2009; *Grapevine Courier*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	November 5, 2009	480598
Webb (FEMA Docket No.: B–1124).	City of Laredo (09–06–1964P).	March 12, 2010; March 19, 2010; *Laredo Morning Times*.	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	February 26, 2010	480651
Utah: Weber (FEMA Docket No.: B–1121).	City of Ogden (09–08–0583P).	February 12, 2010; February 19, 2010; *Standard Examiner*.	The Honorable Matthew R. Godfrey, Mayor, City of Ogden, 2549 Washington Boulevard, Suite 910, Ogden, UT 84401.	June 21, 2010	490189
Virginia: Loudoun (FEMA Docket No.: B–1118).	Unincorporated areas of Loudoun County (09–03–1375P).	March 10, 2010; March 17, 2010; *Loudoun Times-Mirror*.	The Honorable Scott K. York, Loudoun County Chairman, P.O. Box 7000, Leesburg, VA 20177.	March 22, 2010	510090
Wyoming: Natrona (FEMA Docket No.: B–1121).	City of Casper (08–08–0742P).	February 11, 2010; February 18, 2010; *Casper Star-Tribune*.	The Honorable Kenyne Schlager, Mayor, City of Casper, 200 North David Street, Casper, WY 82601.	June 18, 2010	560037

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 7, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–32542 Filed 12–27–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[IB Docket No. 04–47; FCC 10–187]

Modification of the Rules and Procedures Governing the Provision of International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends its rules to grant in part the Petition for Reconsideration filed by the North American Submarine Cable Association (NASCA) and otherwise affirm the Commission's Report and Order, Amendment of parts 1 and 63 of the Commission's Rules, IB Docket No. 04–47, Report and Order, FCC 07–118, 22 FCC Rcd 11398, 72 FR 54363 (2007) (Report and Order), establishing that the Coastal Zone Management Act of 1972 (CZMA) applies to cable landing licenses granted by the Commission. NASCA's Petition for Reconsideration argues that the Commission should rescind the rules adopted in that Report and Order. Although we decline to rescind the rules, we amend them to clarify the applicable licensing requirements and to ensure that the Commission's process for evaluating cable landing licenses complies with the CZMA review procedures established by the National Oceanic and Atmospheric Administration (NOAA).

DATES: Effective January 27, 2011, except for the amendment to § 1.767(k)(4), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rules after it receives OMB approval for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Kimberly Cook or David Krech, Policy Division, International Bureau, FCC, (202) 418–1460 or via the Internet at *Kimberly.Cook@fcc.gov* and *David.Krech@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in IB Docket No. 04–47, FCC 10–187, adopted October 29, 2010, and released November 2, 2010. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-187A1.pdf.* The complete text also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY–B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160.

Summary of Order on Reconsideration

1. In the Order on Reconsideration, the Commission amends parts 1 and 63 of its rules to grant in part the Petition for Reconsideration filed by the North American Submarine Cable Association (NASCA) and otherwise affirms the Commission's Report and Order, Amendment of parts 1 and 63 of the Commission's rules, IB Docket No. 04–47, Report and Order, FCC 07–118, 22 FCC Rcd 11398, 72 FR 54363 (2007) (Report and Order), establishing that the Coastal Zone Management Act of 1972 (CZMA) applies to cable landing licenses granted by the Commission. NASCA's Petition for Reconsideration argues that the Commission should rescind the rules adopted in that Report and Order. Although the Commission declines to rescind the rules, the Commission amends them to clarify the applicable licensing requirements and to ensure that the Commission's process for evaluating cable landing licenses complies with the CZMA review procedures established by the National Oceanic and Atmospheric Administration (NOAA).

2. *Applicability of CZMA to FCC Cable Landing Licenses:* The Commission reaffirms its finding the Report and Order that the CZMA applies to cable landing license applications. In a letter to the Commission, NOAA, the federal agency charged with implementation of CZMA, finds that an FCC license is a federal license or permit that could be reviewed by coastal states, pursuant to the CZMA. In deference to NOAA's statutory and regulatory authority and in furtherance of the Commission's cable landing licensing authority under the Cable Landing License Act, as delegated to the Commission by Executive Order 10530, the FCC must ensure that its cable landing license rules and application procedures comport with the consistency review procedures specified in the CZMA.

3. The CZMA states that no federal agency may grant a license to conduct an activity affecting a coastal area until a state concurs or is presumed to concur with the applicant's certification that a proposed activity is consistent with the state's coastal management plan. *See* 16 U.S.C. 1456(c)(3)(A). If the state includes FCC cable landing licensing in its coastal management plan, FCC licensing is considered a "listed activity." *See* 15 CFR 930.53. As such, the state has six months to review and either concur with or object to the certification that is required if CZMA state consistency review is triggered by the filing of a cable landing license with the Commission. The state's concurrence is conclusively presumed if it does not act within six months after receiving the applicant's certification. *See* 16 U.S.C. 1456(c)(3)(A). At this time, no state has included FCC licensing in its coastal management plan. If the state does not include FCC licensing in its coastal management plan, such licensing is an "unlisted activity." For unlisted activities, NOAA rules require that the state notify the relevant federal agencies, applicants, and the Director of the Office of Ocean and Coastal Resource Management (OCRM) (within NOAA) of the state's request to review the activity within thirty days of notice of the license or permit application, or otherwise be deemed to have waived the right to review the unlisted activity. *See* 15 CFR 930.54.

4. *Certification Requirement:* The Order on Reconsideration amends the certification requirement of § 1.767 to clarify that the applicant need only certify that the proposed submarine cable will not be located in or impact any state that requires review of FCC cable landing applications as a listed activity in its coastal management plan.

5. *Constructive Notice to States:* The Order on Reconsideration clarifies that the thirty-day time period for a state to request NOAA approval for consistency review of the application as an unlisted activity will commence with the issuance of the Public Notice that the submarine cable landing license application has been accepted for filing. NOAA rules allow for constructive notice to a state of submission of an application for licenses for unlisted

activities. "Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse. * * *" 15 CFR 930.54(a)(2). Issuance of the accepted-for-filing Public Notice provides constructive notice to a state of the submission of submarine cable landing license application and commences the thirty-day period specified in § 930.54(a)(1). This publication of the Order on Reconsideration in the **Federal Register** provides constructive notice to the states of this finding and of the utility of monitoring Public Notices for federal license activities that may be subject to consistency review. See 15 CFR 930.54(a)(1), providing that "[w]ith the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities."

6. The accepted-for-filing Public Notice provides a description of the proposed submarine cable, including the location of the landing points. The Public Notice also provides the file number for the application so that interested parties can access the application itself through the FCC Web site. A cable landing license application is publicly available before an accepted-for-filing Public Notice is released. The application must be filed electronically via the International Bureau Filing System (IBFS), 1 CFR 1.767(n); *see also* 1 CFR 1.10000 *et seq.,* and is available for viewing though IBFS once it is filed. IBFS includes a Submarine Cable Landing Pending Application List as a pre-defined report, and also allows for searches for pending applications, as well as current cable landing licenses. The Public Notice thus contains sufficient information about the proposed activity requiring a cable landing license to permit potentially affected states to evaluate whether there will be an impact that, subject to NOAA's agreement, warrants consistency review.

7. The accepted-for-filing Public Notices are available on the FCC Web site and are included in the FCC's Daily Digest. The Daily Digest provides a brief synopsis of Commission documents, including Public Notices, released each business day. The Daily Digest is available on the FCC Web site *http://www.fcc.gov/Daily_Releases/Daily_Digest,* and one can also subscribe to the Daily Digest and have a copy sent via e-mail *http://www.fcc.gov/Daily_Releases/Daily_Digest/subscribe.html.*

8. *Streamlining Process:* Streamlined processing will be available for all applications where the states have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application as an unlisted activity. Also, all applications for transfer of control or assignment of a cable landing station license or modification that do not affect the construction of a submarine cable system or cable landing station are not subject to a consistency review and are eligible for the streamlined grant procedures.

9. With the above-discussed clarification of the rules, the Commission anticipates that the CZMA requirements will rarely if ever disrupt the streamlined processing of cable landing license applications. Unless a state were to change its coastal management program to include FCC cable landing licenses as a listed activity, or were to timely request NOAA approval for consistency review of a particular cable landing application as an unlisted federal license activity, there would be no change to the Commission's streamlined process. The Commission has minimized licensee burdens associated with compliance with the CZMA by removing any ambiguity about the consistency certification that section 1456(c)(3)(A) requires to be included in the application (with a copy to the state) if this is a listed activity, and clarifying the requirements with respect to states that do not list this type of application in their federally approved state programs. As long as no state amends its coastal management program to designate this type of application as a listed activity, the Commission must remove from streamlined processing only those applications that a state, within thirty days of constructive notice of the application, has identified as involving an unlisted activity that it believes requires consistency review. The applicant would be required to amend its application to submit a consistency certification (with a copy to the state) only if OCRM ultimately approved state consistency review of the unlisted activity. In that event, a delay of up to six months from the original Federal agency notice to the state agency or three months after the state receives the applicant's required consistency certification, whichever period terminates last, is unavoidable under applicable statutory and regulatory provisions.

10. *Workability of Rules:* The Commission disagrees with NASCA that the CZMA rules present applicants with a "Catch-22" in Florida. NASCA argues that applicants face a "Catch 22" in Florida because Florida requires applicants to first obtain and submit a copy of their cable landing license, and thus, according to NASCA, under the CZMA rules, there is no way to obtain the federal and state approvals needed to land an undersea cable in Florida. The Order on Reconsideration notes that there is no current requirement that a cable landing license application must include a certification regarding the consistency of proposed activities with Florida's coastal management program, because Florida has not included FCC cable landing licenses as a listed activity in its coastal management plan. Consequently, with the clarification to our rules discussed above, there is no "Catch-22" situation in Florida, because the certification requirement only applies to listed activities and Applicants only need to comply with the procedures for unlisted activities discussed above. The Order on Reconsideration further notes that any problem with Florida's specific situation that may arise in the future could be addressed in consultation among the affected parties, including the state licensing agency, the FCC, and the Director of OCRM, as would be required if Florida were to amend its coastal management program to designate this type of application as a listed activity or to receive approval to review a particular application as an unlisted activity. Thus, if Florida amends its coastal management program to designate a cable landing license application as a listed activity, the FCC will take appropriate steps to address NASCA's concerns.

11. The new rules do not change what applicants for a cable landing license are required to provide the FCC other than the certification requirements necessary to alert the Commission of any outstanding state consistency review and to ensure Commission compliance with the CZMA. The new requirements relate to assuring compliance with the CZMA, and, as discussed above, the Commission defers to NOAA's expertise in the applicability of the consistency review procedures specified in the CZMA.

12. *WTO:* The Order on Reconsideration finds that the CZMA procedures, as clarified, interject no ambiguity concerning the time normally required to reach a decision on a license application. Rather, as required by WTO commitments, all license processing requirements, including any delays attributable to CZMA, are transparent and spelled out in the applicable statutes and rules.

13. *Request to Defer Effective Date:* NASCA's request to defer the effective date of the rules is moot since the Commission did not put the new rules

into effect while NASCA's Petition for Reconsideration was pending.

Paperwork Reduction Act of 1995 Analysis

14. The Report and Order contains rules with new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). Implementation of these rules will be subject to approval by OMB as prescribed by the PRA. The Commission has published a separate notice in the **Federal Register** inviting OMB, the general public, and other Federal agencies to comment on the information collection requirements contained in this document. In addition, the Commission notes pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–298, *see* 44 U.S.C. 3506(c)(4), that the Commission previously sought specific comment on how the Commission may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Final Regulatory Flexibility Analysis

15. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a Regulatory Flexibility Act analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "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).

16. This proceeding was initiated as part of the Commission's 2002 biennial regulatory review process. Through this review, the Commission has sought to: Improve the processing of authorization applications and regulation of international services; and lessen the regulatory burdens placed on carriers.

17. In the Notice of Proposed Rulemaking, 69 FR 13276, the Commission certified that the rules proposed in this proceeding would not have a significant economic impact on a substantial number of small entities. This Order on Reconsideration will amend the submarine cable landing rules to require applicants to include information regarding an applicant's compliance with the Coastal Zone Management Act of l972. Although the majority of submarine cable landing license applicants are not considered small entities, the rule changes affecting these applicants are nominal and will ensure that our rules are consistent with the Coastal Zone Management Act of 1972. Therefore, we find that the rules adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

Ordering Clauses

18. For the reasons discussed above, *it is ordered,* pursuant to sections 1, 4(i), 4(j), and 5, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, sections 34–39 of the Cable Landing License Act, 47 U.S.C. 34–39, and Sections 1.3 and 1.115 of the Commission's rules, 47 CFR 1.3, 1.115, that the Petition for Reconsideration of the Commission's Report and Order filed by NASCA is *granted* to the extent described in this Order and is otherwise *denied.*

19. *It is further ordered* that, pursuant to sections 1, 4(i), 4(j), and 5 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, and sections 34–39 of the Cable Landing License Act, 47 U.S.C. 34–39, Part 1 of the Commission's rules *is amended* as set forth in the Appendix.

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *report and order,* including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

21. *It is further ordered* that the Regulatory Flexibility Certification, as required by section 604 of the Regulatory Flexibility Act and as set forth above *is adopted.*

List of Subjects in 47 CFR Parts 1 and 63

Cable, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, and 303(r).

■ 2. Section 1.767 is amended by revising the note to paragraph (a)(10) and paragraph (k)(4) to read as follows.

§ 1.767 Cable landing licenses.

* * * * *

Note to paragraph (a)(10) —Applicants for cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, if they propose to conduct activities, in or outside of a coastal zone of a state with a federally-approved management plan, affecting any land or water use or natural resource of that state's coastal zone. Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that their proposed activities will comply with the enforceable policies of a coastal state's approved management program. In order to make this determination, applicants should consult National Oceanic Atmospheric Administration (NOAA) regulations, 15 CFR part 930, Subpart D, and review the approved management programs of coastal states in the vicinity of the proposed landing station to verify that this type of application is not a listed federal license activity requiring review. After the application is filed, applicants should follow the procedures specified in 15 CFR 930.54 to determine whether any potentially affected state has sought or received NOAA approval to review the application as an unlisted activity. If it is determined that any certification is required, applicants shall consult the affected coastal state(s) (or designated state agency(ies)) in determining the contents of any required consistency certification(s). Applicants may also consult the Office of Ocean and Coastal Management (OCRM) within NOAA for guidance. The cable landing license application filed with the Commission shall include any consistency certification required by section 1456(c)(3)(A) for any affected coastal state(s) that lists this type of application in its NOAA-approved coastal management program and shall be updated pursuant to § 1.65 of the Commission's rules, 47 CFR 1.65, to include any subsequently required consistency certification with respect to any state that has received NOAA approval to review the application as an unlisted federal license activity. Upon documentation from the applicant—or notification from each coastal state entitled to review the license application for consistency with a federally approved coastal management program—that the state has either concurred, or by its inaction, is conclusively presumed to have concurred with the applicant's consistency

certification, the Commission may take action on the application.

* * * * *

(k) * * *

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to submit a consistency certification to any state pursuant to section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456.

Note to paragraph (k)(4) —Streamlining of cable landing license applications will be limited to those applications where all potentially affected states, having constructive notice that the application was filed with the Commission, have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application within the thirty-day period prescribed by 15 CFR 930.54.

[FR Doc. 2010–32490 Filed 12–27–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 06–94; FCC 10–195]

Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends its rules to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA).

DATES: Effective January 27, 2011, except for amendment to § 73.686(e), which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for that amendment.

FOR FURTHER INFORMATION CONTACT: Ira Keltz, Office of Engineering and Technology, (202) 418–0616, e-mail: *Ira.Keltz@fcc.gov,* TTY (202) 418–2989.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 06–94, FCC 10–195, adopted November 22, 2010 and released November 23, 2010. 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.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Report and Order

1. In accordance with the provisions of the STELA, the Commission amends its rules to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). The *Report and Order* implements DTV signal measurement procedures proposed in the Commission's *Notice of Proposed Rulemaking (SHVERA NPRM),* 75 FR 46885, August 4, 2010, and *Further Notice of Proposed Rulemaking (STELA FNRPM)* in this proceeding with minor modifications. The rules adopted herein were developed based on our recommendations in the *SHVERA Report* and comments received in response to the *SHVERA NPRM* and the *STELA FNPRM.* They largely rely on existing proven methods the Commission has already established for measuring analog television signal strength at any individual location, as set forth in § 73.686(d) of the existing rules, but include modifications as necessary to accommodate the inherent differences between analog and digital TV signals. The new digital signal measurement procedures include provisions for the location of the measurement antenna, antenna height, signal measurement method, antenna orientation and polarization, and data recording.

2. On December 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), which amended the Copyright Act and the Communications Act to further aid the competitiveness of satellite carriers and expand program offerings for satellite TV subscribers while protecting localism. The SHVERA included new provisions for distant digital signal reception and amended section 339 of the Communications Act and section 119 of the Copyright Act to provide three methods by which a subscriber can establish eligibility to receive such signals. First, a subscriber would be eligible to receive the distant digital signal of a particular network if his or her household was predicted by the Satellite Home Viewer Act (SHVA) ILLR model to be unserved by the over-the-air analog signal of any affiliate of that network (not necessarily the local affiliate). Second, a subscriber whose household was predicted to be served by a local station's analog signal could request an on-site signal strength test to determine if his or her household is unable to receive that station's digital signal. Third, a satellite subscriber could receive distant digital signals if the television network station granted a waiver to allow satellite retransmission of the relevant network from a distant station.

3. Section 204 of the SHVERA also directed the Commission to conduct an inquiry regarding whether the Commission's digital TV signal strength standards and signal measurement procedures for determining if a household is "unserved" by local signals should be revised. Section 204 of SHVERA further directed the Commission to provide Congress with a Report on its findings and recommendations for any revisions that might be necessary for implementing DTV measurement standards and procedures. Pursuant to this requirement, the Commission issued a Notice of Inquiry and, on December 8, 2005, issued the *SHVERA Report* to Congress that, in relevant part, stated that the Commission generally believes that the digital television measurement procedures should be similar to the Commission's current procedures for measuring the field strength of analog television stations in § 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals. The Commission also stated that no changes are needed to the digital television field strength standards and/or planning factors for

purposes of determining whether a household is eligible to receive retransmitted distant network television signals.

4. The Commission subsequently adopted the *SHVERA NPRM,* 75 FR 46885, August 4, 2010, in which it proposed measurement standards for digital television signals as recommended in the *SHVERA Report.* The Commission specified that it would rely on the proposed DTV measurement procedures for evaluating DTV signal strength pending the adoption of final rules. These interim procedures have been in effect since adoption of the *SHVERA NPRM* in April, 2006, and to date the Commission has not received any reports of problems or difficulties with their use.

5. The Satellite Television Extension and Localism Act of 2010 (STELA) retains the SHVERA framework of three methods for establishing subscriber eligibility to receive distant digital signals: Predictive model; on-site testing; and waiver. Following the STELA's enactment, the Commission adopted the *STELA FNPRM* to address provisions of the STELA regarding the second method, digital signal measurement procedures. The Commission explained in the *STELA FNPRM* that the STELA raised three new issues not addressed in the *SHVERA NPRM:* (1) Which station signals are to be measured; (2) what type of antenna is to be used in performing on-location testing; and (3) which program stream from a station in the local market is to be measured. The Commission sought comment on these issues and more generally to refresh the record in response to the *SHVERA NPRM.*

6. *Stations to be Tested.* The Commission adopts its proposal that measurements for distant network signal eligibility only include stations located within the same DMA as the satellite subscriber's household. The STELA differs from the SHVIA and SHVERA in that it specifies that only "local" stations, *i.e.,* stations located within the same DMA as the subscriber's household, are to be considered in determining a subscriber's eligibility. Under the SHVIA, Congress defined an "unserved household," with respect to a particular television network, to mean "a household that— cannot receive * * * an over-the-air signal of a primary network station affiliated with that network * * *" This definition was not altered in the SHVERA. However, in the STELA, Congress modified the definition of an "unserved household" to mean a household that "cannot receive * * * an over-the-air signal containing the primary stream, or * * * the multicast stream, originating in that household's *local market* and affiliated with that network * * *" Under the rules for analog TV measurements, a testing entity had to measure the signals of all stations affiliated with a specific network. However, under the STELA, a testing entity is to consider only the signals of those network-affiliated stations that are located in the same DMA as the satellite subscriber. Thus, the Commission proposed in the *STELA FNPRM* to modify its proposed rules for measurement of DTV signals for purposes of determining eligibility for delivery of distant network signals by satellite providers to incorporate this change. The Commission did not receive any comment on this issue and accordingly adopts its proposals without change. The Commission noted that, consistent with section 204(b)(2) of the STELA, this rule change could reduce burdens on both testers and consumers as fewer stations would need to be tested, potentially resulting in lower costs for consumers and saving time.

7. *Indoor Measurements.* The Commission adopted its proposal to continue to rely on an outdoor signal intensity test for purposes of determining subscriber eligibility to receive distant network signals. The current measurement rules for analog signals specify the use of an outdoor antenna, consistent with the provisions of the SHVERA. The STELA modified the statute's wording to replace the term "conventional, stationary, outdoor rooftop receiving antenna" with the term "antenna." In light of the amended statutory language, we invited comment on the potential use of moveable indoor antennas in our digital signal measurement procedures, but for several reasons declined to propose rules for indoor measurements. First, in the *SHVERA Report,* the Commission concluded that many factors, including the performance expected of an indoor antenna, the placement of the antenna, and the location within a structure or room where the antenna is located make it difficult to develop an indoor television signal measurement procedure that will provide accurate, reliable and repeatable results. There are no standard models or planning factors for indoor reception, and in particular there is no standard antenna specification for such reception. The wide variation in indoor viewing situations makes it difficult to specify a standard model that meaningfully relates to any typical indoor viewing location. In addition, the performance of indoor antennas available to consumers varies significantly. Second, signal strengths typically vary significantly at different locations within a room and in different rooms such that it is not apparent where the measurement antenna should be placed. In light of these considerations, the Commission requested comments in the *STELA FNPRM* on alternative approaches for making eligibility determinations in situations where consumers are not able to use an outdoor antenna to receive local television signals. It also noted that the signal intensity standard in § 73.622(e)(1), which specifies the signal level that constitutes service, assumes an outdoor antenna, as it relies on the methodology of the Commission's OET Bulletin No. 69, which in turn relies on the DTV planning factors, including an outdoor antenna The Commission is not persuaded by the Broadcasters' assertion that the STELA requires the Commission to continue to rely on an outdoor antenna for conducting measurements. Instead, it believes that the change in statutory language simply affords that Commission latitude to consider all types of antennas. As observed in the *SHVERA Report,* the Commission has always assumed that households will use the type of antenna that they need to achieve service; if an indoor antenna is insufficient for a particular household, it will generally rely on a rooftop antenna. Nothing in the STELA reflects that Congress wished to alter that assumption. On the contrary, the STELA specifies use of the digital television signal strength standard in § 73.622(e)(1) of the rules, which is derived from the assumptions in the digital television planning factors set forth in OET Bulletin No. 69, including the assumption of use of an outdoor antenna. The Commission does not believe that Congress would have incorporated this assumption into the STELA if it intended use of an indoor antenna standard.

8. The Commission also finds that continued use of an outdoor antenna standard for signal strength measurements is the best means of achieving the directives for digital TV signal strength measurements set forth in the STELA. The STELA specifies use of the digital television signal strength standard in § 73.622(e)(1) of the rules as the threshold metric against which to compare measurements to determine whether households are "served" or "unserved." That signal strength standard is important because it serves to define the service boundary or "service contour" of a digital television station and the threshold at which a

station's service is considered to be available in areas within that service contour. That standard, in turn, is premised on use of an outdoor antenna through the digital television planning factors set forth in OET Bulletin No. 69. To provide for meaningful comparisons between that standard and digital TV signal strength measurements, the Commission finds that it is appropriate to specify use of an outdoor antenna, so that the signals whose strengths are being measured have the same qualities as the signal specified in the standard.

9. *Multicast Signals.* The Commission adopted its tentative conclusion not to make any special provisions for multicast signals in our modified digital signal strength measurement procedures. The Commission's tentative conclusion in the *STELA FNPRM* was based on the recognition that the testing protocol measures a station's signal at the subscriber location and that all program streams are equally available on a signal. Whether the station's signal includes one or more program streams or networks does not necessitate a change in the test employed because the presence of multiple streams has no bearing on the signal intensity or receivability, *i.e.,* the bit stream of a single TV signal can be decoded into multiple program streams, but there is only a single TV signal to measure. The Commission stated its belief that the tester, the satellite carrier and the network affiliate involved in the conduct of the test will be able to identify the network affiliates in the broadcast signal. If the signal is found to be available at the subscriber location at the requisite intensity, then any and all of the networks in that signal will likewise be available. If the station's signal is not found to be present at the requisite intensity, the subscriber will be unserved with respect to any and all networks broadcast on the streams in that signal, unless the subscriber receives a signal of sufficient strength from another local station affiliated with the same network or networks. Only the Broadcasters commented on our tentative proposal, stating that multicast streams should be treated equally. Accordingly, the Commission adopted its tentative conclusion not to make any special provisions for multicast signals.

10. *DTV Signal Measurement Procedures.* The Commission adopted the proposal in the *SHVERA NPRM* to continue using the same rules for measuring DTV signals as the Commission uses for measuring analog TV signals, with the modifications identified. Under the current rules, measurements are to be made as close as possible to the specific site where the household's receiving antenna is located or in the case when there is no receiving antenna at the site, measurements are to be made at locations as close as possible to a reasonable and likely spot for the antenna. Further, the current rules require that five cluster measurements be taken, each at least 3 meters apart, and if possible, the first testing point should be the center of a square whose corners are the four other locations. EchoStar commented that these requirements make good sense and provide a fair degree of flexibility to the tester to adapt to the subscriber's location. However, EchoStar asked for clarification that it is not necessary to choose locations in the shape of a square, but only that the testing locations be as close as possible to the likely antenna site. Similarly DirecTV and Dish Network argue in response to the STELA NPRM that the current cluster measurement is needlessly involved. As an alternative, they state that the locations should be in an area encompassed by a square, circle, or semicircle, as possible, with 3 meter separation and with one measurement in the center representing the nominal television receive location. No other parties commented on this issue. The Commission clarifies that the existing rule provides that measurements should be made in the form of a square "if possible," but does not require that the square pattern be used. Testers have always had the flexibility to adjust the measurement locations in order to conduct them in a safe and economically feasible manner while still obtaining the most accurate measurements possible. Thus, the Commission does not believe any additional clarification or change on this issue is necessary. The Commission also adopted its proposal that measurements of DTV signals be taken by elevating the antenna to 6.1 meters (20 feet) above the ground for one story buildings and to 9.1 meters (30 feet) above the ground for structures taller than one story. Again, this procedure is identical to the current rules for analog TV signal measurements and is consistent with the DTV planning factors. EchoStar, arguing that this height requirement may lead to lengthy tests as the antenna has to be raised, lowered and reset repeatedly, asks that the Commission allow measurements to be made at a lower height and then corrected to reflect the signal strength at 20 or 30 feet. It suggests that such a change may increase the pool of qualified testers who have the necessary equipment to conduct signal strength tests. In opposition, the Broadcasters assert that the rationale underlying the Commission's height rules—to simulate the roof-top antenna mount of a 20 foot one-story house, or a 30 foot tall two-story house—applies equally to digital and analog signals. The Commission agrees with the Broadcasters. This rule was devised as a way to account for most households in the country while maintaining an easy-to-administer standard and the Commission is not persuaded that it should modify it now. Further, no evidence was presented showing that a reduction in the required antenna height requirement would significantly increase the pool of available testers.

11. *Measurement Instrumentation.* The Commission adopted rules requiring that the tests measure the integrated average power over the signal's entire 6 megahertz bandwidth and recommending that the measurement instrumentation use an intermediate frequency (i.f.) bandwidth of 100 kilohertz unless the instrumentation is specifically designed to use an alternative i.f. bandwidth. Additionally, the rules continue to require testers to use good engineering practice, including proper choice and use of instrumentation to ensure accurate results. The Commission had proposed that the tests measure the integrated average power over the signal's entire 6 megahertz bandwidth, and that the intermediate frequency (i.f.) bandwidth of the measuring instrumentation be no greater than 6 megahertz so that the measurement method would conform to the format of the DTV signal. Commenters unanimously agreed with our proposal to measure total integrated power over the 6 megahertz bandwidth, but Broadcasters sought more specificity regarding the restriction of the i.f. bandwidth. They stated that a large i.f. bandwidth, such as 6 megahertz, could produce inaccurate results and recommended that the Commission require an i.f. bandwidth of less than 100 kHz. The Commission does not believe the Broadcaster's concern is significant as most measurements could not be taken using a 6 megahertz i.f. bandwidth because such a setting is not available on most measurement instruments. While we believe most instruments are capable of i.f. bandwidth settings of 100 kHz or less, some may not have this capability, which could potentially reduce the number of parties that have the equipment needed to perform these measurements. Further, measurement instruments with an i.f. bandwidth greater than 100 kHz can yield accurate

results if used properly. Accordingly, the Commission amended it's proposal to recommend, but not require an i.f. bandwidth of 100 kHz.

12. The Commission also adopted its remaining proposals regarding measurement procedure: To use a shielded transmission line; to match the antenna impedance to the transmission line at all frequencies measured; to employ a suitable balance when an unbalanced line is used; to measure transmission line loss for each frequency; to use a horizontally polarized antenna; and to orient the testing antenna so that its maximum gain (over an isotropic antenna) faces the strongest signal coming from the transmitter being tested. All of these procedures are identical to those currently used for analog TV measurement. No parties commented on these proposals. The Commission continues to believe that these procedures are appropriate for measurement for digital television signals and thus, it adopts them as proposed.

13. *Measurement Antenna.* The Commission adopted rules to provide testers flexibility to choose either a half-wave dipole or a gain antenna when conducting DTV measurements. In the *SHVERA NPRM,* the Commission proposed to allow use of either type of antenna for testing the signal strength of DTV signals. In making this proposal, the Commission recognized that both of these types of antennas are permitted for analog TV signal measurements. Under this regime, the on-site tester will have flexibility to determine the best antenna to employ when conducting field strength measurements.

14. The Commission rejects the Broadcasters' arguments against use of dipole antennas. Half-wave dipole antennas and gain antennas each have various advantages and disadvantages. For accuracy, half-wave dipole antennas generally must be retuned for each frequency when making measurements. However, half-wave dipole antennas can be calibrated easily and reliably. Gain antennas do not require retuning and can boost the signal in the direction they are pointed while reducing interfering signals from other directions. On the other hand, gain antennas can be a little more difficult to calibrate precisely and maintain in calibration. The Commission continues to believe that both half-wave dipole and gain antennas will provide reliable, accurate test results, so long as the tester is diligent and takes care to ensure that good engineering practice is followed, as required by the rules. Both types of antennas are permitted for testing analog signals and the Commission will similarly permit both for measuring digital signals. Thus, each tester, based on experience, availability of equipment, and local conditions, will be permitted to decide which antenna would be best for measuring digital TV signals.

15. *Weather.* The Commission adopts its proposal to prohibit digital television signal strength measurements being made during inclement weather. Inclement weather can generally be defined as unfavorable atmospheric conditions such as, but not limited to heavy rainfall, snowfall accumulation, high windspeed, or any combination thereof. As the Commission noted in making this proposal, while in general weather conditions do not have an appreciable effect on the reception of broadcast television signals, heavy precipitation and the movement of major weather fronts through the measurement area could impact the signal strength measurements. No commenter objected to this proposal and the Commission adopted it as proposed.

16. *Data Recording.* The Commission adopts its proposal to apply the same recording requirements for DTV signal strength measurements as are used for analog measurements. In general, the existing rules require that the recorded data contain a list of calibrated equipment along with a description of the calibration, a description of the environment, such as topography, vegetation, buildings, etc., as well as the location and value of the actual measurements. There were no objections to this proposal and the Commission adopted the rules in this regard as proposed.

17. *Other Matters.* EchoStar observes that the Commission's rules define the digital television service area as the noise-limited contour based on criteria that the specified signal level is predicted to be exceeded at 50% of the locations, 90% of the time (using F(50,90) curves and the Longley-Rice terrain prediction model). EchoStar proposes that the time variability factor be adjusted from 90% to 50% (*i.e.* to the F(50, 50) level) for comparison to a median measured value. Similarly, DirecTV and Dish Network state that the Commission should either develop a conversion factor or use a standard method such as Rayleigh, which describes an increase in necessary power from the mean to 99% of 20dB. The comments do not state how this conversion would be used, but the Commission presumes it would be intended as a correction factor to reduce the measured signal strength value. The Commission notes that it rejected this same request in the *SHVERA Report* and that EchoStar has not provided any new information regarding this issue. Accordingly, the Commission will not make any adjustments to the signal strength standard.

18. Finally, in the *SHVERA NPRM,* we asked if there are steps the Commission can take in this proceeding that will facilitate or enhance tester competence and availability. The Commission did not receive any suggestions on this issue. As noted, the Commission has provided flexibility for the conduct of DTV measurement tests, such as the rules requiring good engineering practice, which provides for testers to use antennas and measurement instrumentation with which they are familiar to endure accurate results. The Commission believes that by bestowing this flexibility to testers, it will maximize the number of qualified testers available.

Procedural Matters

19. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") [1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* (NPRM) to this proceeding.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[3]

A. *Need for and Objectives of the Report and Order.* This Report and Order ("R&O") adopts rules to implement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These rules implement our recommendations for DTV measurement procedures presented in the Commission's *Report to Congress* (SHVERA Report) pursuant to section 204(b) of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).[4] The rules provide procedures to determine whether households are eligible to receive

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Public Law No. 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

[2] *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004,* 20 FCC Rcd 2983, Appendix C (2005) (*NPRM*).

[3] *See* 5 U.S.C. 604.

[4] *See SHVERA Report, supra* n.1.

distant DTV network signals retransmitted by satellite communications providers. In December 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004,[5] pursuant to which, the Commission conducted an *Inquiry*[6] (*SHVERA Inquiry*) and on December 9, 2005, released the *SHVERA Report.* In relevant part, the *SHVERA Report* stated that the Commission intended to conduct a rulemaking proceeding to specify procedures for measuring the field strength of digital television signals at individual locations.[7] The Report also stated that the digital television measurement procedures should be similar to the current procedures for measuring the field strength of analog television stations in § 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals.[8]

Wherever possible, the adopted digital signal strength measurement procedures rely on the existing, proven methods the Commission has established for measuring analog television signal strength at any individual location.[9] We also note that the SHVERA statute provided that testing of digital signal strength for this purpose could have begun as early as April 30, 2006.[10]

[5] *See id.*

[6] *See In the Matter Of Technical Standards For Determining Eligibility For Satellite-Delivered Network Signals Pursuant To The Satellite Home Viewer Extension and Reauthorization Act,* ET Docket No. 05–182, *Notice of Inquiry,* 20 FCC Rcd. 9349 (2005), (*SHVERA Inquiry*).

[7] *See SHVERA Report, supra.* note 4.

[8] *Id.*

[9] *See generally,* 47 CFR 73.686(d).

[10] 47 U.S.C. 339(a)(2)(D)(vii) provides trigger dates for testing. Generally, subscribers in the top 100 television markets will be able to request a digital signal strength test after April 30, 2006 and subscribers in other markets will be able to request a test after July 15, 2007. Only network stations that have received a tentative digital channel designation that is the same as such stations' current digital channel, or that have lost interference protection, are subject to the April 30, 2006 commencement date for signal strength testing. Network stations in the top 100 markets without tentative channel designations on their DTV channels, as well as all network stations not in the top 100 markets, will be subject to signal strength testing beginning July 15, 2007, unless the Commission grants the station a waiver. 47 U.S.C. 339(a)(2)(D)(vii)(I)(aa)(bb).

Waiver requests by stations subject to the testing commencement date of April 30, 2006 were required to be submitted by November 30, 2005. To be grantable, waiver requests must provide "clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following: (1) The need for international coordination or approvals; (2) clear zoning or environmental legal impediments; (3) force majeure; (4) the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna; (5) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or (6) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market." The Act further provides that "under no circumstances may such a waiver be based upon financial exigency." Waiver requests by stations subject to the testing commencement date of July 15, 2007 had to be submitted to the Commission no later than February 15, 2007. *See* Public Notice DA No. 05–2979 (rel. Nov. 17, 2005). *See generally,* 47 U.S.C. 339(a)(2)(D)(vii)–(viii).

B. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the IRFA.

C. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in this Notice may apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[11] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[12] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[13] 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).[14]

The rules adopted in this Report and Order modify previous proposals to measure the strength of digital television signals at any particular location, as a means of determining whether any particular household is "unserved" by a local DTV network station and is therefore eligible to receive a distant DTV network signal retransmitted by a Direct Broadcast Satellite (DBS) service provider. Therefore, DBS providers will be directly and primarily affected by the proposed rules, if adopted. In addition, rules adopted will also directly affect those local digital television stations that broadcast network programming. Therefore, in this FRFA, we consider, and invite comment on, the impact of the proposed rules on small digital television broadcast stations, small DBS providers, and other small entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided in the following paragraphs.

Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[15] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[16] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[17] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[18] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[19] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[20] Thus, we estimate that most governmental jurisdictions are small.

Cable Television Distribution Services. The "Cable and Other Program Distribution" census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on

[11] 5 U.S.C. 603(b)(3), 604(a)(3).

[12] *Id.* 601(6).

[13] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[14] 15 U.S.C. 632.

[15] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (revised Sept. 2009).

[16] 5 U.S.C. 601(4).

[17] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[18] 5 U.S.C. 601(5).

[19] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[20] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (EchoStar)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Television Broadcasting. The rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[21] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." [22] The Commission has estimated the number of licensed commercial television stations to be 1,392.[23] According to Commission staff review of the BIA/Kelsey, MAPro Television Database ("BIA") as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations [24] (or about 74 percent) have revenues of $14 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed non-commercial educational (NCE) television stations to be 390.[25] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [26] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Class A TV, LPTV, and TV translator stations. The rules and policies adopted in this Report and Order include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[27] Currently, there are approximately 537 licensed Class A stations, 2,386 licensed LPTV stations, and 4,359 licensed TV translators.[28] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

[21] *See* 13 CFR 121.201, NAICS Code 515120.

[22] *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[23] *See* News Release, "Broadcast Station Totals as of December 31, 2009," 2010 WL 676084 (F.C.C.)(dated Feb. 26, 2010) (Broadcast Station Totals); also available at *http://www.fcc.gov/mb/.*

[24] We recognize that this total differs slightly from that contained in *Broadcast Station Totals, supra* note 446; however, we are using BIA's estimate for purposes of this revenue comparison.

[25] *See Broadcast Station Totals, supra* note 239.

[26] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[27] *See* 13 CFR 121.201, NAICS Code 515120.

[28] *See Broadcast Station Totals, supra* note 239.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rules in this *Report & Order* establish procedures for measuring digital television signal strength at any specific location. These measurement procedures will be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by DBS providers. These procedures are similar to the ones used for measuring analog television signal strength for like purposes, with only those revisions necessary to account for the difference between digital and analog signals. Section 339(a)(2)(D)(vi) of the Communications Act (47 U.S.C. 339(a)(2)(D)(vi)) delineates when measurements are necessary and when the satellite communications provider, the digital television broadcast station, or the consumer is responsible for bearing their cost. No reporting requirement is proposed. We sought but did not receive comment on the types of burdens direct broadcast satellite service providers and digital television broadcast stations may face in complying with the proposed requirements. Entities, especially small businesses and, more generally, small entities are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[29]

Since the adoption of analog television signal strength procedures in 1999, the number of analog TV signal strength measurements taken in order to determine household eligibility to receive distant analog TV network signals has been infrequent. For example, DIRECTV, in comments filed in ET Docket No. 05–182, Notice of Inquiry on Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act, 20 FCC Rcd 9349 (2005), stated that in the last five years only 1400 DIRECTV subscribers received onsite tests to determine eligibility to receive distant network television signals. In that proceeding, both DIRECTV and EchoStar indicated that they generally declined to perform or arrange for a test and instead refused to offer distant signals when subscribers were predicted to be "served" and the relevant network stations refused to grant a waiver.

As TV stations transition from analog transmissions to DTV, we anticipate that the combined number of analog and digital measurements will not increase substantially. This is because, as part of the DTV transition, television stations will be ceasing the transmission of analog signals and households seeking to receive retransmitted DTV network signals will not be seeking to receive analog signals. In other words, digital measurements will replace analog measurements. Also, as direct broadcast stations increasingly offer local-to-local service to households pursuant to SHVERA, those households will not be eligible to receive retransmitted distant signals and therefore DTV signal strength measurements for this purpose will not be necessary.

Finally, the Report & Order will allow measurements to be taken using either a standard half-wave dipole antenna or a gain antenna with a known antenna factor for the channel(s) that are to be tested for digital measurements, this approach would allow the tester flexibility in performing the test while still providing for accurate results. The Report & Order does not require the use of a gain antenna only. Commenters provided information regarding differences in ease of use of gain antennas as compared to the use of half-wave dipole antennas. The Commission received comments on what rules it should propose, if any, that would address the apparent lack of qualified, independent testers to perform signal strength tests. Commenters indicated that there is no feasible regulatory solution to increasing the number of qualified testers available. No alternative methods that would reduce the cost of performing a test while retaining or improving on the accuracy of the proposed method was submitted.

20. *Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[30] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

21. *Final Paperwork Reduction Act of 1995 Analysis.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, we have assessed the effects of our requirement that testers adhere to the data recording requirements of § 73.686(e)(3) and described in paragraph 11, *supra.* of the *Report and Order,* and find that these requirements will not impose burdens to businesses with fewer than 25 employees as we are adopting the identical data recording requirements that have been used for analog TV measurements for many years.

Ordering Clauses

22. Pursuant to sections 4(i), 4(j), 303 and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303 and 339, and section 204 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified at 47 U.S.C. 339(a)(2)(D)(vi), that this Report and Order is *hereby adopted.*

23. Section 73.686(e) of the Commissions rules, *is amended* as set forth in Appendix A of the Report and Order. The rules adopted in this Report and Order contains information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, which will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date of the rules adopted herein.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Government Accountability Office

[29] *See* 5 U.S.C. 603(c).

[30] *See* 5 U.S.C. 801(a)(1)(A).

pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Communications equipment, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed 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.

■ 2. Section 73.686 is amended by revising the heading of paragraph (d) and by adding a new paragraph (e) to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(d) *NTSC—Collection of field strength data to determine NTSC television signal intensity at an individual location—cluster measurements—*

* * * * *

(e) *DTV—Collection of field strength data to determine digital television signal intensity at an individual location—cluster measurements*—(1) *Preparation for measurements*—

(i) *Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the center frequency of the channel being tested or a gain antenna provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations*—At the test site, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose a minimum of five locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBμ) and report it as the measurement.

(iii) *Multiple signals*—

(A) If more than one signal is being measured (*i.e.,* signals from different transmitters), use the same locations to measure each signal.

(B) For establishing eligibility of a satellite subscriber to receive distant network signals, only stations affiliated with the network in question that are located in the same Nielsen Designated Market Area (DMA) as the test site may be considered and tested.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of this chapter. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Perform an on-site calibration of the test instrument in accordance with the manufacturer's specifications. Tune a calibrated instrument to the center of the channel being tested. Measure the integrated average power over the full 6 megahertz bandwidth of the television signal. The intermediate frequency of the instrument should be set to 100 kilohertz unless the instrument is specifically designed by the manufacturer to use an alternative i.f. setting. The instrument must be capable of integrating over the selected i.f. for the 6 megahertz channel bandwidth. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an un-balanced line, employ a suitable balance. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements during periods of inclement weather, including, but not limited to, periods of heavy rainfall, snowfall accumulation, high windspeed, or any combination thereof.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBμ after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

[FR Doc. 2010–32694 Filed 12–27–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427–0609–02]

RIN 0648–XY82

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2011 Quota Adjustments; 2011 Summer Flounder Quota for Delaware

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2011 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including commercial scup possession limits. This action prohibits Federally permitted commercial fishing vessels

from landing summer flounder in Delaware in 2011 due to continued quota repayment from previous years' overages.

The actions of this final rule are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The intent of this action is to establish harvest levels and other management measures to ensure that these species are not overfished or subject to overfishing in 2011. In addition, this action implements measures to ensure continued rebuilding of the summer flounder stock, which remains under a Magnuson-Stevens Act rebuilding program.

DATES: Effective January 1, 2011, through December 31, 2011.

ADDRESSES: Copies of the specifications document, consisting of Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee (SSC) are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov.* The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the FMP developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The Council prepared the FMP under the authority of the Magnuson-Stevenson Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The regulations implementing the FMP outline the process for specifying the annual catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (*e.g.,* mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2011 specifications for these fisheries was provided in the proposed specifications (75 FR 70192; November 17, 2010). That information is not repeated here.

NMFS will establish the 2011 recreational management measures (*i.e.,* minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date, after the Council concludes its deliberations and submits its recommendations as specified in the FMP.

Changes From the Proposed to Final Specifications Rule

The FMP provides that up to 3 percent of landing levels may be set aside for research. The proposed rule proposed the maximum amounts (3 percent) of the Total Allowable Landings (TALs) be set aside for summer flounder (884,400 lb (401 mt)), scup (600,000 lb (272 mt)) and black sea bass (108,000 lb (49 mt)); however, the full 3 percent was not awarded for either summer flounder or scup in the final grant awards for the 2011 RSA program. Only 521,441 lb (237 mt) of summer flounder and 396,500 lb (180 mt) of scup were awarded as 2011 RSA. Thus, this rule increases slightly the commercial quotas and recreational harvest limits for both summer flounder and scup to account for the final RSA amounts. No changes occurred to the black sea bass specifications as the 3 percent was fully utilized by the 2011 grant awards process. No other changes occurred from the proposed to final specifications rule.

2011 Specifications

This final rule implements the following specifications:

Summer Flounder: A TAL of 29.48 million lb (13,372 mt), including RSA of 521,441 lb (237 mt); a commercial quota of 17,375,135 lb (7,881 mt); and a recreational harvest limit of 11,583,424 lb (5,254 mt).

Scup: A Total Allowable Catch (TAC) of 24.1 million lb (10,932 mt); a 20.0 million lb TAL (9,072 mt), including RSA of 396,500 lb (180 mt); a commercial quota of 15,600,000 lb (7,076 mt); and a recreational harvest limit of 4,312,770 lb (1,956 mt). NMFS acknowledges that the Council, at its December 15, 2010, meeting, voted to recommend an increase to the 2011 scup TAC, TAL, commercial quota, and recreational harvest limit. This recommendation is still under development and consideration and will be addressed through separate rulemaking, if needed.

Black Sea Bass: A TAL of 3,600,000 lb (1,633 mt), including RSA of 108,000 lb (49 mt); a commercial quota of 1,711,080 lb (776 mt); and a recreational harvest limit of 1,780,920 lb (808 mt).

Additional detail for each species' specifications is provided, as follows.

Summer Flounder

Summer flounder remain under a stock rebuilding program and must achieve the rebuilding biomass target (*i.e.,* $B_{MSY\ (Maximum\ Sustainable\ Yield)}$) by January 1, 2013. Analysis conducted by the Southern Demersal Working Group (SDWG) indicates that the 2011 summer flounder TAL implemented by this rule is projected to provide the necessary stock growth to achieve the rebuilding objective within the specified time frame. This TAL also satisfies a 2000 Federal Court Order (*Natural Resources Defense Council* v. *Daley,* Civil No. 1:99 CV 00221 (JLG)) which requires the annual summer flounder TAL to have at least a 50-percent probability of success.

This TAL has a 50-percent probability of constraining fishing mortality below the management target of $F_{40\ percent}$ = 0.255 and a 98-percent probability of constraining fishing mortality below the overfishing threshold of $F_{MSY\ proxy}$ = 0.310.

Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2010, plus any previously unaccounted for overages from January–December 2009. Table 1 summarizes, for each State, the commercial summer flounder percent shares as outlined in § 600.100(d)(1)(I), the resultant 2011 commercial quota (both initial and less the RSA), the quota overages as described above, and the final adjusted 2011 commercial quota, less the RSA.

TABLE 1—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2011

State	FMP percent share	Initial quota (TAL)		Initial quota, less RSA		2010 Quota overages (through 10/31/10)		Adjusted quota, less RSA	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	8,412	3,816	8,264	3,748	0	0	8,264	3,749
NH	0.00046	81	37	80	36	0	0	80	36
MA	6.82046	1,206,403	547,224	1,185,064	537,545	28,112	12,752	1,156,952	524,793
RI	15.68298	2,774,006	1,258,289	2,724,939	1,236,032	0	0	2,724,939	1,236,032
CT	2.25708	399,232	181,092	392,171	177,889	0	0	392,171	177,889
NY	7.64699	1,352,600	613,539	1,328,675	602,687	0	0	1,328,675	602,687
NJ	16.72499	2,958,316	1,341,892	2,905,990	1,318,157	0	0	2,905,990	1,318,157
DE	0.01779	3,147	1,427	3,091	1,402	56,259	25,519	−53,168	−24,117
MD	2.03910	360,676	163,603	354,296	160,709	55,966	25,386	298,330	135,322
VA	21.31676	3,770,509	1,710,303	3,703,816	1,680,051	0	0	3,703,816	1,680,051
NC	27.44584	4,854,620	2,202,056	4,768,752	2,163,106	0	0	4,768,752	2,163,106
Total	100.00	17,688,000	8,023,278	17,375,135	7,881,362	140,337	63,657	17,287,969	7,841,823

Notes: 2010 quota overage is determined through comparison of landings for January through October 2010, plus any landings in 2009 in excess of the 2009 quota (that were not previously addressed in the 2010 specifications) for each State. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all States with an allocation. A State with a negative number has a 2011 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Delaware Summer Flounder Closure

Table 1 indicates that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2011. As a result, there is no quota available for 2011 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any State that the Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2011, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2011 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from Federally permitted vessels that land in Delaware for the 2011 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

As previously noted in the preamble of this rule, the Council voted to recommend an increase to the 2011 scup TAC, TAL, commercial quota, and recreational harvest limit during their December 15, 2010, meeting. This recommendation is still under development and consideration and will be addressed through subsequent rulemaking, as needed. The 24.1 million lb (10,932 mt) 2011 TAC is divided into commercial (78 percent) and recreational (22 percent) allocations, in accordance with the FMP; the respective discard estimates are then subtracted to yield the preliminary TAL of 20.0 million lb (9,072 mt). After deducting 396,500 lb (180 mt) from the preliminary TAL for 2011 RSA, the commercial quota is reduced to 15.6 million lb (7,076 mt), with a recreational harvest limit of 4.3 million lb (1,956 mt).

The commercial TAC, discards, and TAL (commercial quota) are allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)—45.11 percent; Summer (May-October)—38.95 percent; and Winter II (November-December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Consistent with the revised quota setting procedures established for the FMP (67 FR 6877, February 14, 2002), scup overages are determined based upon landings for the Winter I and Summer 2010 periods, plus any previously unaccounted for landings from the 2009 Winter II period. There were no preliminary overages of the 2010 Winter I or Summer Period quotas or previously unaccounted for overages of any 2009 quota periods; therefore, no adjustment to the 2011 scup specifications is required in this final rule. Any overage of the 2010 Winter II period will be addressed in July 2011, prior to the start of the 2011 Winter II fishery.

Per the quota accounting procedures in the FMP, after June 30, 2011, NMFS will compile all available landings data for the 2010 Winter II quota period and compare the landings to the 2010 Winter II quota period allocation, inclusive of any transfer from the 2010 Winter I quota period. Any overages will be determined, and deductions, if needed, will be made to the Winter II 2011 allocation and published in the **Federal Register**. Table 2 contains the quota period allocations for the 2011 commercial scup fishery.

TABLE 2—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2011 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Estimated discards		Initial quota		Initial quota less overages (through 10/31/2009)		Adjusted quota less overages and RSA		Federal possession limits (per trip)	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	8,479,778	3,846	1,442,618	645	7,037,160	3,192	N/A	N/A	6,897,648	3,129	30,000	13,608
Summer	38.95	7,321,821	3,321	1,245,621	565	6,076,200	2,756	N/A	N/A	5,955,738	2,701	N/A	N/A
Winter II	15.94	2,996,401	1,359	509,761	231	2,486,640	1,128	N/A	N/A	2,437,342	1,106	2,000	907
Total	100.0	18,798,000	8,527	3,198,000	1,451	15,600,000	7,076	N/A	N/A	15,290,730	6,936	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**.

Metric tons are as converted from pounds and may not necessarily add due to rounding.

N/A = Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.120(a)(3), this final rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 3. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 3—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

The FMP specifies that the annual TAL is allocated 49 percent to the commercial sector and 51 percent to the recreational sector. After deducting 108,000 lb (49 mt) of RSA for the three selected research projects, the TAL is allocated to the commercial sector as a 1.76 million lb (798 mt) commercial quota and to the recreational sector as a 1.84 million lb (835 mt) recreational harvest limit.

Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the period January-September 2010, plus any previously unaccounted for landings from January-December 2009. Landings exceeded the quota by 33,434 lb (1.5 mt) during the 2009 black sea bass commercial fishery. However, because 2010 black sea bass commercial landings to date remain substantially below the published 2010 quota, no adjustment to the 2011 commercial quota appears necessary at this time to account for the overage in 2009. If 2010 landings remain below the difference between the 2010 quota and the 2009 overage, no adjustment to the 2012 black sea bass quota would be necessary. If landings exceed the 2010 quota when the complete 2010 fishing year landings are examined next year, NMFS will adjust the 2012 commercial quota, accordingly.

Comments and Responses

NMFS received four comments during the 15-day comment period for the November 17, 2010, proposed rule. One comment from the State of Connecticut supported all of the proposed specification measures. Two comments from recreational fishing groups supported the summer flounder and scup proposed measures but opposed the black sea bass specifications. Some of the issues raised by the commenters cannot be addressed through the Council's specification process and this final rule. Specifically, some commenters raised issues regarding recreational fishery issues that will be addressed through the annual recreational management measures rulemaking process that began with the Council's December 15, 2010, meeting. In the spring of 2011, NMFS will conduct notice-and-comment rulemaking to implement recreational management measures for these three species. In addition, some comments focused on the FMP allocation of scup between the recreational and commercial sectors and between scup commercial quota periods. The allocations are specified in the FMP and cannot be modified through the specification process; such a change would require either a Council-initiated FMP framework adjustment or amendment. The remaining comments applicable to the 2011 specifications and RSA projects raised the same or similar issues; therefore, the significant issues and concerns are summarized and responded to here.

Comment 1: Two comments stated that the proposed 2011 catch levels for scup would represent a considerable departure from optimum yield (OY) for the stock. The comments recognize that the scup stock is fully rebuilt and assert that the 2011 catch levels are overly precautionary.

Response: As was stated in response to a similar comment submitted for the 2010 specifications, NMFS continues to interpret the requirement to achieve OY on a continual basis as producing the long-term series of catches such that the average catch is equal to OY, overfishing is prevented, and long-term average biomass is near or above B_{MSY}. As such, National Standard 1, which directs fisheries to be managed for OY, does not contemplate that the OY will necessarily be achieved in a single year given the natural fluctuation of fish stocks in response to environmental conditions.

NMFS acknowledges that the 2011 catch level recommendation for scup, as implemented in this final rule, is conservative relative to the B_{MSY} values for the stocks. Indications from the stock assessment do indicate that the biomass is well above B_{MSY} and the stock was declared rebuilt in 2009; however, the SSC provided a clear rationale for its 2011 ABC recommendation to the Council, identifying several specific sources of uncertainty associated with the stock assessment and citing concerns about increasing catch levels rapidly to the MSY level before the recently new stock assessment first used for the 2010 fishing year has been further evaluated relative to fishery performance. The approach taken by the SSC and Council in recommending the 2011 scup specifications to NMFS for implementation through this final rule is wholly consistent with the National Standard 1 guidelines (74 FR 3178; January 16, 2009), which contemplate reducing catch levels from OY in situations where the uncertainties pertaining to the fishery necessitate so doing. As the level of uncertainty associated with the scup stock assessment decreases, either through improvement in the data, assessment methods, or through validating assessment-related output and estimates through the fishery dependent data and fishery performance, the SSC should be able to utilize a less conservative approach in recommending ABC if the stock status remains robust, thereby moving landing levels to near or at MSY.

Comment 2: Two comments opposed the black sea bass TAC of 4.5 million lb (2,041 mt) and TAL of 3.6 million lb (1,633 mt). The comments state that the black sea bass stock is rebuilt, not overfished, and not experiencing overfishing and that the SSC's selection of a constant catch strategy utilizes inappropriate years of very low harvest as the foundation of the constant catch starting point. The commenters request that NMFS implement a TAC of 5.86 million lb (2,658 mt) and a corresponding TAL of 4.96 million lb (2,250 mt), based on the mean TAL from the years 2002–2009.

Response: NMFS is implementing, through this final rule, the SSC and Council recommended TAC of 4.5 million lb (2,041 mt) and TAL of 3.6 million lb (1,633 mt) for the 2011 black sea bass fishery. The SSC has indicated that black sea bass biomass remained stable or increased with a TAC in the 4–4.5 million lb range (1,814–2,041 mt). Furthermore, the SSC identified several sources of uncertainty associated with determining the overfishing limit (OFL) and ABC for the black sea bass stock, and deems the 2011 ABC recommendation provided and implemented through this rule as the basis for deriving the 2011 TAC and TAL as consistent with the best available scientific information. Specifically, the ABC and associated TAC/TAL implemented through this rule has been recommended by the SSC as the level necessary to ensure scientific uncertainty is mitigated in 2011 so that the black sea bass stock will have a low likelihood of being subject to overfishing. The request submitted a comment on the proposed rule lacks any sufficient explanation of how or why the SSC-recommended ABC is inconsistent with the best available scientific information. It offers only an alternative range of years upon which to base an ABC without any technical explanation of how this value affects the stock or prevents overfishing. Instead, the commenters cite, without any specific justification data, a potential negative socio-economic impact of the 4.5 million lb (2,041 mt) ABC/TAC on recreational fishermen. While a higher catch level could potentially reduce socio-economic impacts as indicated in the Council's economic impact analyses, such levels were considered and rejected by both the Council and NMFS as they would be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, and National Standard 2 as a higher ABC/TAC would exceed the recommendation of the SSC (*see* FRFA for additional impacts discussion). Based on these points, NMFS cannot disapprove the Council and SSC-recommended ABC and implement a higher catch level, as requested by the two commenters.

Comment 3: Individuals representing various recreational fishing interest jointly submitted a comment letter opposing the proposal to set aside summer flounder, scup, and black sea bass TAL in support of the RSA program. This comment stemmed from their belief that the RSA program is funding research that should be funded by NMFS. They were particularly concerned by the funding of a nearshore trawl survey by the RSA program. In addition, expressed concern that the project selection process is not transparent and does not allow for public input.

Response: For the 2011 fishing year, the Council chose to reserve up to 3 percent of the summer flounder, scup, and black sea bass TAL for the 2011 Mid-Atlantic RSA Program. Although projects are ultimately selected by the Science and Research Director of the Northeast Fisheries Science Center, projects must address research priorities that are identified by the Council. The Council receives public input on the RSA research priorities through RSA Committee and Council meetings. The Council's RSA research priorities for 2011 include resource assessment and monitoring work, including fishery independent surveys for all Mid-Atlantic species, especially in the near shore zone (as provided by the NEAMAP survey). As such, funding work as described under the proposed rule is consistent with the Council's intent for the Mid-Atlantic RSA program.

In response to the comment that the selection process lacks transparency, the proposal solicitation announcement (Federal Funding Opportunity NOAA–NMFS–NEFSC–2011–2002247) outlines the process that NMFS must follow prior to making any award. This process ensures successful proposals have high technical merit and management relevance. As such, at least three technical reviewers evaluate each proposal from a scientific perspective, and NMFS convenes a meeting with the RSA Committee to review all of the proposals. This process ensures that qualified and relevant projects are selected in a timely manner and in compliance with the confidentiality rules and regulations established by NOAA Grants.

Therefore, under the 2011 Mid-Atlantic RSA Program, NMFS will implement the Council's decision to set-aside summer flounder, scup and black sea bass TAL to support projects that address the Council's RSA research priorities.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2011. This action establishes specifications (*i.e.,* annual quotas) for the summer flounder, scup, and black sea bass fisheries, and possession limits for the commercial scup fishery.

Preparation of the proposed rule was dependent on the submission of the EA/RIR/IRFA in support of the specifications that is developed by the Council. This document was received by NMFS in mid-September 2010. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. The proposed rule published on November 17, 2010, with a comment period ending December 2, 2010. Publication of the adjusted summer flounder quota at the start of the fishing year that begins January 1, 2011, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association* v. *Daley.*

If the 30-day delay in effectiveness were not waived, the lack of effective quota specifications on January 1, 2011, would present significant confusion to the complex cooperative management regime governing these fisheries. The summer flounder, scup, and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2011. Individual States would be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS would be unable to control harvest in any way, as there would be no quotas in place for any of the three species until the regulations are effective. NMFS would be unable to control harvest or close the fishery should landings exceed the quotas. In addition, the Delaware summer flounder fishery would be open for fishing, but in a negative quota situation. All of these factors would result in a race for fish wherein

uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2011 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. There is no historic precedent by which to gauge the magnitude of harvest that might occur should quotas for these three species not be in place during the first weeks of 2011. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established quotas for these three species before the regulations would become effective, should quotas not be in place on January 1, 2011. Should this occur, the fishing mortality objectives for all three species and the summer flounder rebuilding plan could be compromised.

This final rule has been determined to be not significant for purposes of Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (*see* **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. For a summary of the comments received, and the responses thereto, refer to the "Comments and Responses" section of this preamble.

Description and Estimate of Number of Small Entities To Which the Rule Will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal commercial or charter/party permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in State waters. The Council estimates that the proposed 2011 specifications could affect 2,206 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2009 (the most recent year of complete permit data). However, the more immediate impact of this rule will likely be realized by the 810 vessels that actively participated in these fisheries (*i.e.,* landed these species) in 2009.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken To Minimize Economic Impact on Small Entities

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. For 2011, no such adjustments were recommended by the Council; therefore, this final rule contains no such measures. Therefore, the economic impact analysis of the action is evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2011 ABC level for all three stocks. NMFS considers this recommendation to be consistent with National Standard 2. Establishment of catch levels higher than the SSC ABC recommendations would require substantial, compelling argument and documentation that the recommendations were not, in fact, based on the best available scientific information. NMFS-approved measures for the summer flounder fishery must also ensure that the statutory requirements of the stock rebuilding program are met by the January 1, 2013, rebuilding deadline.

The economic analysis for the 2011 specification assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2011, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative in 2011 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to specify and implement a TAL (and TAC for scup) for these fisheries on an annual basis. The no action alternative would result in no fishing limits for 2011, and could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species.

Furthermore, Alternative 2 from the Council's analysis contains the most restrictive TAL options (*i.e.,* the lowest catch levels—summer flounder, 22.13 million lb (10,038 mt); scup, 14.11 million lb (6,400 mt); black sea bass, 2.30 million lb (1,043 mt)). While this alternative would achieve the required objectives for all three species, it carries the highest potential negative impact on small entities in the form of foregone fishing opportunity. Alternative 2 was not preferred by the Council or NMFS because other alternatives considered have lower impacts on small entities while achieving the stated objectives of the 2011 specification process.

Alternative 3 (least restrictive quotas; highest catch levels—summer flounder, 35.05 million lb (15,898 mt); scup, 28.96 million lb (13,136 mt); and black sea bass, 4.35 million lb (1,973 mt)) would produce the smallest impact on small entities. For all three species, the respective quotas under Alternative 3 are inconsistent with the SSC's catch level recommendations. Because the respective Alternative 3 measures would establish annual fishing limits that exceed the fishing level recommendations of the Council's SSC, they are inconsistent with the Magnuson-Stevens Act requirements and cannot be implemented for 2011,

despite having the lowest associated impact on small entities.

Through this final rule, NMFS implements the summer flounder, scup, and black sea bass TALs contained in Alternative 1 (summer flounder, 29.48 million lb (13,372 mt); scup, 20.0 million lb (9,072 mt); and black sea bass, 3.6 million lb (1,633 mt)), the Council's preferred alternatives, which consist of the quota alternatives that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. Relative to 2010, the 2011 commercial quotas and recreational harvest measures in this action would result in the following TAL changes for the commercial and recreational sectors:

(1) A 33.2-percent increase for summer flounder;

(2) A 41.7-percent increase for scup; and

(3) A 2.7-percent reduction for black sea bass.

The respective TALs contained in Alternative 1 for all three species were selected because they satisfy NMFS's obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the TALs for all three species all have very low likelihoods of causing overfishing to occur in 2011. TAL Alternative 1 for summer flounder is also projected to provide the necessary continued stock rebuilding to achieve the SSB_{MSY} by the rebuilding period ending date of January 1, 2013.

The revenue decreases associated with allocating a portion of available catch to the RSA program are expected to be minimal, and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program can be sold, and the profits used to offset the costs of research. As such, total gross revenues to the industry are not expected to decrease substantially, if at all, as a result of this final rule authorizing RSA for 2011.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are available from NMFS (*see* **ADDRESSES**) and at the following Web site: *http://www.nero.noaa.gov.*

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

Dated: December 21, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–32656 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101116568–0608–01]

RIN 0648–BA42

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery

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

ACTION: Interim final rule, request for comments.

SUMMARY: NMFS issues this interim final rule to amend the cost recovery regulations implementing the Tilefish Fishery Management Plan (FMP) to require the first year cost-recovery fee percentage to be calculated based on the best estimate of the actual costs associated with the management, data collection and analysis, and enforcement of the individual fishing quota (IFQ) allocation program (not to exceed 3 percent), rather than to be set at the statutory maximum 3 percent of the ex-vessel value of tilefish landings.

DATES: This rule is effective December 28, 2010. Written comments must be received no later than 5 p.m. eastern standard time, on January 27, 2011.

ADDRESSES: This document and other supporting material are available online at *http://www.regulations.gov* or *http://www.nero.nmfs.gov.* You may submit comments, identified by RIN number 0648–BA42, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Christopher Biegel.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Tilefish Cost-Recovery Regulatory Amendment."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Fishery Management Specialist, phone (978) 281–9112.

SUPPLEMENTARY INFORMATION:

Background

Limited access privilege programs (LAPPs) are a management tool authorized under section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that allow a permit holder exclusive harvest of a portion of the total allowable catch of a fishery, but does not confer any right or title to any fish before the fish is harvested by the holder. An IFQ is a form of LAPP where the harvest permit is issued to an individual. Cost-recovery for LAPPs is mandated by section 304(d)(2) of the Magnuson-Stevens Act, which states that "the Secretary * * * shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program."

The tilefish fishery is managed by the Mid-Atlantic Fishery Management Council (Council) through the Tilefish FMP. The final rule implementing Amendment 1 to the FMP (74 FR 42580, August 24, 2009) established an IFQ program which included the required cost-recovery provisions.

Fees are collected to recover the costs associated with management, data

collection and analysis, and enforcement of IFQ programs. Amendment 1 provides that NMFS shall determine a cost-recovery fee percentage for the tilefish fishery (not to exceed the statutory maximum of 3 percent) by calculating all the expenditures that are directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program for each fee period (calendar year) and then dividing that total by the total ex-vessel value of all tilefish landings from dealer reports for the same time period. The resulting percentage is used to calculate the individual tilefish IFQ fees for each fee period. This fee calculation has not been changed from the method detailed in the final rule implementing Amendment 1. Tilefish IFQ allocation permit holders are responsible for paying the fee, which is based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit.

When cost-recovery fees have been assessed, IFQ allocation permit holders have 45 days from the date of the bill to submit payment to NMFS. Cost-recovery payments are made electronically via the Federal Web portal, *http://www.pay.gov*. Electronic payment options include payment via a credit card, or via direct automated clearing house (ACH) withdrawal from a designated checking account.

This interim final rule changes the language of the tilefish cost recovery regulations at 50 CFR 648.291(h)(1) pertaining to the first year cost-recovery billing period fee. NMFS initially set the fee at a statutory maximum of 3 percent of the total ex-vessel value of all landings under each permanent IFQ allocation permit, including landings of allocation that is leased for the first year, with any over charges to be credited against cost-recovery fees assessed in subsequent years. NMFS implemented this provision because NMFS expected that the information necessary to calculate the actual recoverable costs would not be available prior to sending out recovery fee statements for the first fee period. Using recently available information on the amount of actual costs incurred and the value of landings to date during the first year of the IFQ program, NMFS has estimated that using a fee of 3 percent could over charge tilefish allocation holders as much as 10 times their actual fee liability. This would constitute an unnecessary and excessive fee to the affected industry and, as such, would be contrary to the public interest. The new regulations require the first year fee percentage to be calculated based on the best estimate of the actual costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program (not to exceed 3 percent).

Classification

The Administrator, North East Region, NMFS, determined that the FMP cost-recovery regulatory amendment is necessary for the conservation and management of the tilefish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be unnecessary, impracticable, and contrary to the public interest. This amendment includes revisions that make only minor, non-substantive changes in order to avoid imposing unnecessarily high fees on tilefish IFQ holders. The regulatory provisions that this rule modify had set the cost-recovery fee for the first year at 3 percent of landed value of tilefish which is the maximum allowed by the Magnuson-Stevens Act. NMFS established this fee because NMFS expected that the information necessary to calculate the actual fee for the first year would be unavailable as the cost-recovery fee bills must be mailed near the end of the fee period. However, the information necessary to calculate the actual cost-recovery fee has recently become available, so NMFS has been able make the calculation before the end of the fee period. The actual fees calculated were significantly less than the 3 percent of landed value of tilefish. Also, although fee payment overages are credited against cost-recovery fees assessed in subsequent years, there is a concern that some fishermen may leave the fishery and not be able to recover their fee payment overage as there is no mechanism in the regulations that allows for such a repayment. Soliciting prior public comment on, and delaying the effective date of this rule, could prevent NMFS from billing IFQ holders for the actual cost-recovery fees and impose an unnecessary burden on the industry.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the reasons given above.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 21, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.291, paragraph (h)(1) is revised to read as follows:

§ 648.291 Individual fishing quota.

* * * * *

(h) * * *

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program.* The Regional Administrator shall determine the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period to derive a percentage. IFQ allocation permit holders will be assessed a fee based on this percentage times the total ex-vessel value of all landings under their permanent IFQ allocation permit, including landings of allocation that is leased. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ Allocation permit holder. If NMFS determines that the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program exceed 3 percent of the total value of tilefish landings, only 3 percent are recoverable.

(i) *Valuation of IFQ Allocation.* The 3-percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed by an IFQ allocation holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which contain the price per pound at the time of dealer purchase.

(ii) [Reserved]

* * * * *

[FR Doc. 2010–32691 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 248
Tuesday, December 28, 2010

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1205; Directorate Identifier 2010–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –200LR, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777–200, –200LR, –300, and –300ER series airplanes. This proposed AD would require, for certain airplanes, replacing certain boost pump relays with ground fault interrupter (GFI) relays. For certain other airplanes, this proposed AD would require installing new panels in the main equipment center, making certain wiring changes, installing new GFI relays in the new panels, and installing new electrical load management system (ELMS) software. For certain other airplanes, this proposed AD would require doing certain bond resistance measurements, and corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 11, 2011.

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

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

For Boeing service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

For Smiths and GE Aviation service information identified in this proposed AD, contact GE Aviation, Customer Services—Clearwater, P.O. Box 9013, Clearwater, Florida 33758; telephone 727–539–1631; fax 727–539–0680; e-mail *cs.support@ge.com*.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1205; Directorate Identifier 2010–NM–146–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address

unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

As part of the SFAR 88 analysis, Boeing found indications of wiring deterioration that could cause electrical faults in the main tank boost pumps, main tank jettison pumps, or center tank override/jettison pumps could result in an overheat or electrical arc condition that could provide an ignition source in the fuel tanks. Also, uncommanded dry operation of the main tank jettison pumps or the center tank override/jettison pumps could result from electrical faults or a single failure in the pump switch or the electrical load control unit (ELCU). Extended dry operation of the pump could cause an overheat condition, electrical arc, or frictional sparks, providing an ignition source in the fuel tanks. These ignition sources, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010. That service bulletin describes procedures for replacing 4 main tank boost pump relays in electrical load management system (ELMS) panels P110, P210, and P320, with new ground fault interrupter (GFI) relays.

Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010, references the service bulletins identified in the following table as additional sources of guidance for replacing the main tank boost pump relays.

TABLE—SERVICE BULLETINS FOR BOEING SERVICE BULLETIN 777–28A0038

Service bulletin	Revision level	Date
GE Aviation Service Bulletin 4000ELM–28–448.	1	January 7, 2010.
GE Aviation Service Bulletin 4000ELM–28–451.	1	January 7, 2010.
GE Aviation Service Bulletin 5000ELM–28–446.	1	January 7, 2010.
GE Aviation Service Bulletin 5000ELM–28–449.	1	January 7, 2010.
Smiths Service Bulletin 4000ELM–28–445	Original	August 8, 2007.
Smiths Service Bulletin 4000ELM–28–465	Original	August 8, 2007.
Smiths Service Bulletin 5000ELM–28–443	Original	August 8, 2007.
Smiths Service Bulletin 5000ELM–28–463	Original	August 8, 2007.
Smiths Service Bulletin 6000ELM–28–444	Original	August 8, 2007.
Smiths Service Bulletin 6000ELM–28–447	Original	August 8, 2007.
Smiths Service Bulletin 6000ELM–28–450	Original	August 8, 2007.
Smiths Service Bulletin 6000ELM–28–464	Original	August 8, 2007.

We have also reviewed Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010. That service bulletin describes procedures for certain airplanes, for installing new panels, P301 and P302, in the main equipment center; making certain wiring changes; installing new GFI relays in the P301 and P302 panels; and installing new ELMS software. For certain airplanes, that service bulletin describes procedures for measuring the bond resistance between the terminal lugs on certain studs and a ground bracket assembly, and corrective action if necessary. The corrective actions include repairing (cleaning of applicable components with solvent) or replacing (replacing applicable components with new components) affected components.

Boeing Service Bulletin 777–28A0039, Revision 2, dated September 20, 2010, is an additional source of guidance for installing ELMS software.

Smiths Service Bulletin 5000ELM–28–454, dated August 13, 2007; and GE Aviation Service Bulletin 6000ELM–28–455, Revision 1, dated February 1, 2010; are additional sources of guidance for making wiring changes in the P110 and P210 panels.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 130 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Replacements: Group 1 airplanes identified in Boeing Service Bulletin 777–28A0038.	3	$85	$25,577	$25,832	126	$3,254,832.
Replacements: Group 2 airplanes identified in Boeing Service Bulletin 777–28A0038.	3	85	52,545	52,800	0	No airplanes currently on U.S. Register.
Replacements: Group 3 airplanes identified in Boeing Service Bulletin 777–28A0038.	4	85	37,257	37,597	4	150,388.
Replacements: Group 4 airplanes identified in Boeing Service Bulletin 777–28A0038.	4	85	17,816	18,156	0	No airplanes currently on U.S. Register.
Installations and Measurement: Boeing Service Bulletin 777–28A0037.	76	85	29,934	36,394	130	4,731,220.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–1205; Directorate Identifier 2010–NM–146–AD.

Comments Due Date

(a) We must receive comments by February 11, 2011.

Affected ADs

(b) AD 2008–11–13, Amendment 39–15536, affects this AD.

Applicability

(c) This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category; as identified in the service information specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010.

(2) Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Related Airworthiness Limitation

Note 1: AD 2008–11–13 requires a revision of the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to include limitations for the fuel tank systems. One of the limitations, AWL 28–AWL–18, requires a repetitive inspection of the ground fault interrupter (GFI) functions.

Installations and Software Changes

(g) For Group 1 and 2 airplanes identified as Configuration 2 in Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010: Within 36 months after the effective date of this AD, install new panels, P301 and P302, in the main equipment center; make certain wiring changes; install new GFI relays in the P301 and P302 panels; and install new electrical load management system (ELMS) software; as applicable. Do the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010.

Note 2: Boeing Service Bulletin 777–28A0039, Revision 2, dated September 20, 2010, is an additional source of guidance for installing ELMS software.

Note 3: Smiths Service Bulletin 5000ELM–28–454, dated August 13, 2007; and GE Aviation Service Bulletin 6000ELM–28–455, Revision 1, dated February 1, 2010; are additional sources of guidance for making a wiring change in the P110 and P210 panels, respectively.

(h) For Group 1 and 2 airplanes identified as Configuration 1 in Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010: Within 36 months after the effective date of this AD, do bonding resistance measurements to verify bonding requirements as specified in Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010, are met, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010.

Replacement of GFI Relays

(i) For airplanes identified in Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010: Within 60 months after the effective date of this AD, replace 4 main tank boost pump relays in electrical load management system panels P110, P210, and P320 with new GFI relays, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010.

Note 4: Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010, references the service bulletins identified in Table 1 of this AD as additional sources of guidance for replacing the main tank boost pump relays.

TABLE 1—ADDITIONAL SOURCES OF GUIDANCE FOR REPLACING THE MAIN TANK BOOST PUMP RELAYS

Group No. of airplanes, as identified in Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010	Panel No.	Service bulletin	Revision level	Date
Group 1	P110	Smiths Service Bulletin 5000ELM–28–443.	Original	August 8, 2007.

TABLE 1—ADDITIONAL SOURCES OF GUIDANCE FOR REPLACING THE MAIN TANK BOOST PUMP RELAYS—Continued

Group No. of airplanes, as identified in Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010	Panel No.	Service bulletin	Revision level	Date
Group 1	P210	Smiths Service Bulletin 6000ELM–28–444.	Original	August 8, 2007.
Group 1	P320	Smiths Service Bulletin 4000ELM–28–445.	Original	August 8, 2007.
Group 2	P110	GE Aviation Service Bulletin 5000ELM–28–446.	1	January 7, 2010.
Group 2	P210	Smiths Service Bulletin 6000ELM–28–447.	Original	August 8, 2007.
Group 2	P320	GE Aviation Service Bulletin 4000ELM–28–448.	1	January 7, 2010.
Group 3	P110	GE Aviation Service Bulletin 5000ELM–28–449.	1	January 7, 2010.
Group 3	P210	Smiths Service Bulletin 6000ELM–28–450.	Original	August 8, 2007.
Group 3	P320	GE Aviation Service Bulletin 4000ELM–28–451.	1	January 7, 2010.
Group 4	P110	Smiths Service Bulletin 5000ELM–28–463.	Original	August 8, 2007.
Group 4	P210	Smiths Service Bulletin 6000ELM–28–464.	Original	August 8, 2007.
Group 4	P320	Smiths Service Bulletin 4000ELM–28–465.	Original	August 8, 2007.

Paperwork Reduction Act Burden Statement

(j) A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32657 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Various Aviation Communication & Surveillance Systems (ACSS) Traffic Alert and Collision Avoidance System (TCAS) Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for various aircraft equipped with certain ACSS TCAS units. This proposed AD would require upgrading software. This proposed AD results from reports of anomalies with TCAS units during a flight test over a high density airport. The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. We are proposing this AD to prevent TCAS units from dropping tracks, which could compromise separation of air traffic and lead to subsequent mid-air collisions.

DATES: We must receive comments on this proposed AD by February 11, 2011.

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

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

For service information identified in this proposed AD, contact Aviation Communication & Surveillance Systems, LLC, 19810 North 7th Avenue, Phoenix, Arizona 85027–4741; telephone (623) 445–7040; fax (623) 445–7004; e-mail *acss.orderadmin@L-3com.com;* Internet *http://www.acss.com.* You may review copies of the referenced service information at

the FAA, Transport Airplane Directorate, 1601 Lind, Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of anomalies with the Aviation Communication & Surveillance Systems (ACSS) Traffic Alert and Collision Avoidance System (TCAS) units during a flight test over a high density airport. The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. When the TCAS unit interrogated aircraft in a high density airport area, some of the targets disappeared from the cockpit display or were not recognized. One occurrence of dropped tracks occurred for 30 to 40 seconds of a 90-minute flight segment. This condition, if not corrected, could lead to possible loss of separation of air traffic and possible mid-air collision.

Relevant Service Information

We have reviewed the ACSS service information specified in the following table. The service information describes procedures for upgrading software for the ACSS TCAS to improve tracking of nearby Mode-S intruders in high density environments.

RELEVANT SERVICE INFORMATION

ATA Service Bulletin No.	ACSS Publication No.	Date
4066010–34–6036	8008230–001	May 25, 2010.
7517900–34–6040	8008229–001	May 12, 2010.
7517900–34–6041	8008231–001	May 24, 2010.
7517900–34–6042	8008236–001	May 27, 2010.
9000000–34–6016	8008233–001	June 4, 2010.
9000000–34–6017	8008234–001	June 4, 2010.
9000000–34–6018	8008238–001	June 4, 2010.
9003000–34–6006	8008235–001	June 4, 2010.
9003500–34–6014	8008221–001	May 27, 2010.
9003500–34–6015	8008222–001	May 27, 2010.
9003500–34–6016	8008223–001	May 27, 2010.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 9,000 airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost up to $2,870 per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be up to $27,360,000, or up to $3,040 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aviation Communication & Surveillance Systems, LLC: Docket No. FAA–2010–1204; Directorate Identifier 2010–NM–147–AD.

Comments Due Date

(a) We must receive comments by February 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aviation Communication & Surveillance Systems (ACSS) Traffic Alert and Collision Avoidance System (TCAS) units with the part numbers (P/Ns) specified in the ACSS service bulletins identified in Table 1 of this AD, as installed on, but not limited to, various transport and small airplanes, certificated in any category.

TABLE 1—APPLICABLE SERVICE BULLETINS

ATA Service Bulletin No.	ACSS Publication No.	Date
4066010–34–6036	8008230–001	May 25, 2010.
7517900–34–6040	8008229–001	May 12, 2010.
7517900–34–6041	8008231–001	May 24, 2010.
7517900–34–6042	8008236–001	May 27, 2010.
9000000–34–6016	8008233–001	June 4, 2010.
9000000–34–6017	8008234–001	June 4, 2010.
9000000–34–6018	8008238–001	June 4, 2010.
9003000–34–6006	8008235–001	June 4, 2010.
9003500–34–6014	8008221–001	May 27, 2010.
9003500–34–6015	8008222–001	May 27, 2010.
9003500–34–6016	8008223–001	May 27, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 34: Navigation.

Unsafe Condition

(e) This AD results from reports of anomalies with TCAS units during a flight test over a high density airport. The TCAS units dropped several reduced surveillance aircraft tracks because of interference limiting. The Federal Aviation Administration is issuing this AD to prevent TCAS units from dropping tracks, which could compromise separation of air traffic and lead to subsequent mid-air collisions.

Compliance

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

Upgrade Software

(g) Within 48 months after the effective date of this AD, upgrade software for the ACSS TCAS, in accordance with the Accomplishment Instructions of the applicable ACSS service bulletin identified in Table 1 of this AD.

Note 1: ACSS Publication Number 8008233–001, dated June 4, 2010, ATA Service Bulletin 9000000–34–6016, contains three part numbers (P/Ns 9000000–10007, –20007, and –55007) which were never produced.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on December 13, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32658 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1172; Airspace Docket No. 10–ACE–14]

Proposed Amendment of Class E Airspace; Point Lookout, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Point Lookout, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at M. Graham Clark-Taney Field Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also changes the airport name.

DATES: 0901 UTC. Comments must be received on or before February 11, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building

Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1172/Airspace Docket No. 10–ACE–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1172/Airspace Docket No. 10–ACE–14." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface for SIAP operations at M. Graham Clark-Taney Field Airport, Point Lookout, MO. Controlled airspace is needed for the safety and management of IFR operations at the airport. The airport name also would be changed from M. Graham Clark Airport to M. Graham Clark-Taney Field Airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at M. Graham Clark-Taney Field Airport, Point Lookout, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E5 Point Lookout, MO [Amended]

Point Lookout, M. Graham Clark—Taney County Airport, MO
(Lat. 36°37′33″ N., long. 93°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of M. Graham Clark—Taney County Airport and within 3.1 miles each side of the 119° bearing from the airport extending from the 6.5-mile radius to 9.7 miles southeast of the airport, and within 3.9 miles each side of the 299° bearing from the airport extending from the 6.5-mile radius to 10.6 miles southeast of the airport.

Issued in Fort Worth, TX on December 15, 2010.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–32576 Filed 12–27–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1008; Airspace Docket No. 10–ANE–110]

Proposed Establishment of Class E Airspace; Colebrook, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Colebrook, NH, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving the Upper Connecticut Valley Hospital Heliport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before February 11, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2010–1008; Airspace Docket No. 10–ANE–110, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1008; Airspace Docket No. 10–ANE–110) 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 Docket No. FAA–2010–1008; Airspace Docket No. 10–ANE–110." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Colebrook, NH providing the controlled airspace required to support the new Copter RNAV GPS special standard instrument approach procedures for Upper Connecticut Valley Hospital Heliport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 6-mile radius of the point in space coordinates of the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Upper Connecticut Valley Hospital, Colebrook, NH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5 Colebrook, NH [New]

Upper Connecticut Valley Hospital Heliport, NH
(Lat. 44°54′14″ N., long. 71°28′52″ W.)
Point in Space Coordinates
(Lat. 44°54′26″ N., long. 71°29′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 44°54′26″ N., long. 71°29′54″ W.) serving Upper Connecticut Valley Hospital Heliport.

Issued in College Park, Georgia, on December 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–32587 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1009; Airspace Docket No. 10–ANE–111]

Proposed Establishment of Class E Airspace; Lancaster, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Lancaster, NH to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving the Weeks Medical Center Heliport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before February 11, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–1009; Airspace Docket No. 10–ANE–111, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1009; Airspace Docket No. 10–ANE–111) 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 Docket No. FAA–2010–1009; Airspace Docket No. 10–ANE–111." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Lancaster, NH providing the controlled airspace required to support the new Copter RNAV GPS special standard instrument approach procedures for Weeks Medical Center Heliport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 6-mile radius of the point in space coordinates for the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Weeks Medical Center Heliport, Lancaster, NH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5 Lancaster, NH [New]

Weeks Medical Center Heliport, NH
(Lat. 44°29′07″ N., long. 71°33′17″ W.)
Point in Space Coordinates
(Lat. 44°29′33″ N., long. 71°34′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 44°29′33″ N., long. 71°34′41″ W.) serving the Weeks Medical Center Heliport.

Issued in College Park, Georgia, on December 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–32568 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1007; Airspace Docket No. 10–ANE–109]

Proposed Establishment of Class E Airspace; Wolfeboro, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Wolfeboro, NH, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Huggins Hospital Heliport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before February 11, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2010–1007; Airspace Docket No. 10–ANE–109, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1007; Airspace Docket No. 10–ANE–109) 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 Docket No. FAA–2010–1007; Airspace Docket No. 10–ANE–109." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Wolfeboro, NH providing the controlled airspace required to support the new Copter RNAV GPS special standard instrument approach procedures for Huggins Hospital Heliport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 6-mile radius of the point in space coordinates for the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Huggins Hospital, Wolfeboro, NH.

List of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5 Wolfeboro, NH [New]

Huggins Hospital Heliport, NH
(Lat. 43°34′56″ N., long. 71°12′06″ W.)
Point in Space Coordinates
(Lat. 43°35′15″ N., long. 71°11′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 43°35′15″ N., long. 71°11′19″ W.) serving the Huggins Hospital Heliport.

Issued in College Park, Georgia, on December 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–32581 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AC96

Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations to implement new statutory provisions established under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 731 of the Dodd-Frank Act added a new section 4s(i) to the Commodity Exchange Act (CEA), which requires the Commission to prescribe standards for swap dealers and major swap participants related to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. The proposed rules would establish requirements for swap confirmation, portfolio reconciliation, and portfolio compression for swap dealers and major swap participants.

DATES: Submit comments on or before February 28, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AC96 and Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted

or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Associate Director, 202–418–5684, *sjosephson@cftc.gov;* Frank N. Fisanich, Special Counsel, 202–418–5949, *ffisanich@cftc.gov;* or Jocelyn Partridge, Special Counsel, 202–418–5926, *jpartridge@cftc.gov;* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act[2] amended the Commodity Exchange Act (CEA)[3] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 731 of the Dodd-Frank Act amends the CEA by adding a new Section 4s, which sets forth a number of requirements for swap dealers and major swap participants. Specifically, section 4s(i) of the CEA establishes swap documentation standards for those registrants.

Section 4s(i)(1) requires swap dealers and major swap participants to "conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps." Under section 4s(i)(2), the Commission is required to adopt rules "governing documentation standards for swap dealers and major swap participants." The Commission is proposing the regulations on swap confirmation, portfolio reconciliation, and portfolio compression[4] discussed below, pursuant to the authority granted under sections 4s(h)(1)(D), 4s(h)(3)(D), 4s(i), and 8a(5) of the CEA.[5] The Dodd-Frank Act requires the Commission to promulgate these provisions by July 15, 2011.

The proposed regulations reflect consultation with staff of the following agencies: (i) The Securities and Exchange Commission; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to the proposal, and the proposed regulations incorporate elements of the comments provided.

II. Proposed Regulations

The proposed regulations would prescribe standards for the timely and accurate confirmation of swaps and would require the reconciliation and compression of swap portfolios. Confirmation, portfolio reconciliation, and portfolio compression have been recognized as important post-trade processing mechanisms for reducing risk and improving operational efficiency by both current market participants and their regulators.

With respect to confirmation, prudent practice requires that, after coming to an agreement on the terms of a transaction, parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of their agreement. Through portfolio reconciliation, counterparties are able to resolve any discrepancies or disputes as early as possible and arrive at an understanding of their overall risk exposure to one another. Portfolio compression allows for a reduction in outstanding trade count and outstanding gross notional value by replacing redundant trades with a smaller number of trades and reduced gross notional value. This process reduces operational risk and increases operational efficiency because there are fewer trades to maintain, and results in a more accurate expression of market size.

In the past few years, market participants and regulators have paid particular attention to the post-trade processing of swaps. For example, operational issues associated with the over-the-counter (OTC) derivatives market have been the focus of reports and recommendations by the President's Working Group on Financial Markets (PWG).[6] In response to the financial crisis in 2008, the PWG called on the industry to improve trade matching and confirmation and to promote portfolio reconciliation.

Since 2005, the Federal Reserve Bank of New York (FRBNY) has led a targeted, supervisory effort to enhance operational efficiency and performance in the OTC derivatives market, by increasing automation in processing and by promoting the timely confirmation of trades. Known as the OTC Derivatives Supervisors' Group (ODSG), the FRBNY leads an on-going effort with OTC derivatives dealers' primary supervisors, trade associations, industry utilities, and private vendors, through which market participants (including buy-side participants) regularly set goals and commitments to bring infrastructure, market design, and risk management improvements to all OTC derivatives asset classes. Over the years, the ODSG has expanded its focus from credit derivatives to include interest rate derivatives, equity derivatives, foreign exchange derivatives, and commodity derivatives. Along with this expanded focus has come increased engagement with market participants on cross-asset class issues. Specifically, the ODSG encouraged the industry to commit itself to a number of reforms, including improved operational performance with respect to the OTC derivatives confirmation process, portfolio reconciliation, and portfolio compression. The regulations proposed by the Commission would build upon the ODSG's work.

It is important to note at the outset, that the Commission expects that swap dealers and major swap participants would be able to comply with each of the proposed rules by executing a swap on a swap execution facility (SEF) or on a designated contract market (DCM), or by clearing the swap through a derivatives clearing organization (DCO). For swaps executed on a SEF or a DCM, the SEF or DCM will provide the counterparties with a definitive written

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[3] 7 U.S.C. 1 *et seq.*

[4] The Commission may propose additional rules related to documentation provisions under section 4s(i) of the CEA.

[5] Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

[6] *See, e.g.,* Press Release, "President's Working Group on Financial Markets, Progress Summary on OTC Derivatives Operational Improvements" (Nov. 2008).

record of the terms of their agreement, which will serve as a confirmation of the swap. Similarly, if a swap is executed bilaterally, but subsequently submitted to a DCO for clearing, the DCO will require a definitive written record of all terms to the counterparties' agreement prior to novation by the DCO; this too would serve as a confirmation of the swap.

When a swap is cleared by a central counterparty, the problems that portfolio reconciliation is designed to solve (agreement on all terms and the valuation of the swap) no longer exist because the clearinghouse (1) requires a definitive written record of all terms of the swap; and (2) arrives at a settlement price for all cleared swaps on a daily basis. Additionally, the Commission is considering a proposed regulation that would require DCOs to offer portfolio compression exercises on a regular basis. The proposed rule for swap dealers and major swap participants has been designed to complement the proposed DCO rule.

In designing these rules, the Commission has taken care to minimize the burden on those parties that will not be registered with the Commission as swap dealers or major swap participants. To the extent that market participants believe that additional measures should be taken to reduce the burden or increase the benefits of confirmation, reconciliation, and compression for the swaps market, the Commission welcomes all comments.

The Commission requests comment on all aspects of proposed §§ 23.500 (definitions), 23.501 (confirmation), 23.502 (portfolio reconciliation), and 23.503 (portfolio compression), as well as comment on the specific provisions and issues highlighted in the discussion below. The Commission further requests comment on an appropriate effective date for final regulations, including comment on whether it would be appropriate to have staggered or delayed effective dates for some regulations based on the nature or characteristics of the activities or entities to which they apply. The Commission recognizes that there will be differences in the size and scope of the business of particular swap dealers and major swap participants. Therefore, comments are solicited on whether certain provisions of the proposed regulations should be modified or adjusted to reflect the differences among swap dealers and major swap participants or differences among asset classes.

A. Swap Confirmation

1. Background

Over the past several years, OTC derivatives market participants and their regulators have paid particular attention to the timely confirmation of swaps. The Government Accountability Office (GAO) found that the rapid expansion of trading volume of swaps, such as credit derivatives since 2002, caused stresses on the operational infrastructure of market participants. These stresses in turn caused the participants' back office systems to fail to confirm the increased volume of trades for a period of time.[7] The GAO found that the lack of automation in trade processing and the purported assignment of positions by transferring parties to third parties without notice to their counterparties were factors contributing to this backlog. If transactions, whether newly executed or recently transferred to another party, are left unconfirmed, there is no definitive written record of the contract terms. Thus, in the event of a dispute, the terms of the agreement must be reconstructed from other evidence, such as e-mail trails or recorded trader conversations. This process is cumbersome and may not be wholly accurate. Moreover, if purported transfers of swaps, in whole or in part, are made without giving notice to the remaining parties and obtaining their consent, disputes may arise as to which parties are entitled to the benefits and subject to the burdens of the transaction.

As the work of the ODSG demonstrates, the industry is capable of swift movement to contemporaneous execution and confirmation. A large back-log of unexecuted confirmations in the credit default swap (CDS) market created by prolonged negotiations and inadequate confirmation procedures were the subject of the first industry commitments made by participating dealers to ODSG.[8] In October 2005, the participating dealers committed to reduce by 30% the number of confirmations outstanding more than 30 days within four months. In March 2006, the dealers committed to reduce the number of outstanding confirmations by 70% by June 30, 2006. By September 2006, the industry had reduced the number of all outstanding CDS confirmations by 70%, and the number of CDS confirmations outstanding more than 30 days by 85%. The industry achieved these targets largely by moving 80% of total trade volume in CDS to confirmation on electronic platforms, eliminating backlogs in new trades. Today, over 90% of "electronically eligible"[9] CDS trades are confirmed electronically, the majority on the day of execution and up to 98% within two days.[10]

The ODSG has established a supervisory goal for all transactions to be confirmed as soon as possible after the time of execution. Ideally, this would mean that there would be a written or electronic document executed by the parties to a swap for the purpose of evidencing all of the terms of the swap, including the terms of any termination (prior to its scheduled maturity date), assignment, novation, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations.

In the case of electronically processed transactions, all such transactions should be matched and confirmed, at a minimum, on the same day the trade was executed. For electronically processed transactions, confirmation typically is effected by a third-party "matching" process. If transactions are not confirmed in a timely manner, backlogs of outstanding unconfirmed trades develop, increasing risk. Timely and accurate confirmation of transactions is critical for all downstream operational and risk management processes, including the correct calculation of cash flows and discharge of settlement obligations as well as accurate measurement of counterparty credit exposures. Timely confirmation also allows any rejections, exceptions, and/or discrepancies to be identified and resolved more quickly.

Another ODSG objective is a marketplace that electronically processes as many transactions as possible in as many parts of the processing life cycle as possible, but particularly in the "upstream" parts of the life cycle, where transaction information is first entered into the system (trade capture). To achieve this objective, as many transactions as possible and practicable should be executed on electronic platforms, such

[7] U.S. Government Accountability Office, "Credit Derivatives: Confirmation Backlogs Increased Dealers' Operational Risks, But Were Successfully Addressed After Joint Regulatory Action," GAO–07–716 (2007) at pages 3–4.

[8] *See* October 4, 2005 industry commitment letter to the Federal Reserve Bank of New York, available at *http://www.newyorkfed.org/newsevents/news_archive/markets/2005/an050915.html.*

[9] It remains unclear precisely how much of the total CDS market is not "electronically eligible," as eligibility is determined by the OTC derivatives market participants.

[10] *See* March 1, 2010 Summary of OTC Derivatives Commitments provided to the Federal Reserve Bank of New York, available at *http://www.newyorkfed.org/newsevents/news/markets/2010/100301_table.pdf.*

as SEFs, in order to approach the ideal of "straight-through processing." Otherwise, transactions should be keyed into electronic systems as soon as possible after execution.

2. Proposed Confirmation Rule

To promote the efficient operation of the swap market, and to facilitate market participants' overall risk management, the Commission is proposing confirmation § 23.501.

For the purposes of proposed § 23.501, proposed § 23.500 would provide certain critical definitions pertaining to confirmation. An acknowledgment would be defined as a written or electronic record of all the terms of a swap signed and sent by one party to another. When one party acknowledges the terms of a swap and its counterparty verifies it, the result is the issuance of a confirmation that reflects the terms of the swap between the parties. A confirmation thus would be defined as a written or electronic record of a swap that has been signed and sent by one party and verified by the other where that record has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty. Finally, proposed § 23.500 would define execution to be a legally-binding oral, written, or electronic agreement by the parties. For the purposes of the confirmation rule, the term swap transaction is defined to include any event that would result in a new swap or a change in the terms of a swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations under a swap.

With regard to both acknowledgments and confirmations, the Commission intends that all the terms of a swap transaction be provided for acknowledgment and confirmation. The objective is that parties have full written agreement on all terms as soon as practicable after execution and also upon any ownership event during the life of the swap. Such life cycle events would include any termination (prior to the scheduled maturity date of the swap), assignment, novation, exchange, transfer, amendment, or conveyance of, or extinguishing of rights or obligations under the swap.[11] For each of these events, the parties should have written documentation evidencing all the terms of the transaction, as soon as possible after the transaction occurs. This approach to documenting "life cycle event data" is consistent with the Commission's proposed rules for reporting swap data to a swap data repository.[12]

The timely and accurate confirmation of all swaps and life cycle events for existing swaps would ensure that the parties know the terms of their executed transactions and the identities of their counterparties at all times. Confirming all swap transactions on the day of execution should be standard for all market participants. However, the Commission recognizes some entities that will not be registered as swap dealers or major swap participants may not have the operational capacity to confirm their swap transactions as quickly as swap dealers and major swap participants. Accordingly, the Commission is proposing a bifurcated approach for confirmations. Swap dealers and major swap participants entering into swap transactions with other swap dealers or major swap participants would be required to obtain a confirmation on the same calendar day as execution (*i.e.,* no later than T+0).

On the other hand, swap dealers and major swap participants entering into swap transactions with counterparties that are not swap dealers or major swap participants would be required to send an acknowledgment for each swap on the same calendar day as execution (*i.e.,* no later than T+0). Swap dealers and major swap participants would then have policies and procedures in place to confirm the swap with financial entities as defined in proposed § 23.500[13] on the same calendar day as execution and with all other entities not later than the next business day following execution.

The Commission also is proposing that the times prescribed for achieving swap acknowledgment and confirmation vary depending upon whether transactions are electronically executed or electronically processed. Under proposed § 23.501(a)(1), all swap dealers and major swap participants entering into swap transactions with other swap dealers or major swap participants would be required to confirm their swap transactions according to the following timeframe:

- For any swap transaction that has been executed and processed electronically, within 15 minutes of execution;
- For any swap transaction that is not electronically executed, but that will be processed electronically, within 30 minutes of execution; or
- For any swap transaction that cannot be processed electronically by the swap dealer or major swap participant, within the same calendar day as execution.

Under proposed § 23.501(a)(2), swap dealers and major swap participants entering into swap transactions with counterparties that are not swap dealers or major swap participants would be required to send an acknowledgment of each swap transaction according to the following timeframe:

- For any swap transaction that has been executed and processed electronically, within 15 minutes of execution;
- For any swap transaction that is not executed electronically, but that will be processed electronically, within 30 minutes after execution; or
- For any swap transaction that cannot be processed electronically by the swap dealer or major swap participant, within the same calendar day as execution.

For those swap transactions entered into with counterparties that are not swap dealers or major swap participants, under proposed § 23.501(a)(3), swap dealers and major swap participants would be required to establish written policies and procedures reasonably designed to ensure confirmation with financial entities on the same calendar day as execution and with all other entities by the next business day after the swap transaction is executed. These procedures must include a requirement that, prior to entering into any swap transaction, the swap dealer or major swap participant furnish to a prospective counterparty, or receive from a prospective counterparty, a draft acknowledgment specifying all terms of the swap transaction other than pricing and terms to be definitively agreed to at execution. As is currently the custom in many swap markets, including credit

[11] Life cycle events would also include corporate actions affecting a security or securities on which the swap is based (*e.g.,* a merger, dividend, stock split or bankruptcy).

[12] The Notice of Proposed Rulemaking for Swap Data Recordkeeping and Reporting Requirements is available on the Commission's Web site: *http://comments.cftc.gov/FederalRegister/Proposed.aspx.*

[13] This definition is taken from the end user exception to the clearing requirement under section 2(h)(7)(C)(i) of the CEA. The term financial entity includes the following eight entities: (i) A swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool as defined in section 1a(10) of the CEA; (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); (vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or (viii) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956. *See* 7 U.S.C. 2(h)(7)(C)(i). The definition would include the statutory exclusion and limitation as contained in section 2(h)(7)(C) and also would include any Commission regulations promulgated pursuant to the statutory section.

and equity derivative markets, the parties may rely on a standard confirmation agreement.

Under proposed § 23.501(b), a swap dealer or major swap participant would be required to keep records regarding the processing of swap acknowledgments and confirmations. These records would include the time and date of transmission or receipt of any acknowledgment or confirmation, the length of time between transmission of any acknowledgment to a counterparty and receipt of the signed confirmation, and the length of time between execution and confirmation of the swap.

In order to retain flexibility for all market participants, the proposed rules do not prescribe a particular venue or platform for confirmation. As noted above, currently many swap transactions are electronically processed by third-party "matching" services. While the Commission encourages the continued use and expansion of these services, the approach taken in the proposed rule would allow parties the ability to confirm bilaterally through whatever means they select, so long as they are able to meet the schedule laid out in the rule.

In a similar effort to retain flexibility, at this time, the Commission is not prescribing the acknowledgment or confirmation documentation that market participants must use. The Commission encourages the use of master confirmation agreements and other standardized documentation that has been developed by the industry in an effort to reduce confirmation backlogs, among other things. However, the most critical aspect of the confirmation rule is that all the terms of the swap are agreed to in writing and in a timely manner.

The proposed rules would apply to all new swaps and to all swap transactions, as that term is defined in the rules, entered into after the effective date of the regulation.

3. Comments Requested

The Commission requests comment on all aspects of proposed § 23.501. In particular, the Commission requests comment on the following questions:

- Does the proposed rule appropriately allocate the responsibility for providing the swap acknowledgments?
- Is it feasible to require that all acknowledgments be provided electronically?
- Should the proposed rule require swap dealers and major swap participants to provide a swap acknowledgment or confirmation more quickly, particularly for transactions that are executed or processed electronically?
- Does the proposed rule provide sufficient time for swap dealers and major swap participants to provide swap acknowledgments to their counterparties?
- Are there swap transactions for which all of the terms required to be included on an acknowledgment or in a confirmation would not be known on the same calendar day as execution? If so, please describe these swap transactions and include the terms that would not be known on the same calendar day as execution, as well as the reason these terms would not be known.
- Is it necessary to clarify further that the confirmation rule would apply to life cycle events, such as termination, assignment, novation, exchange, transfer, amendment, or conveyance?
- Are there other post-execution events for which a confirmation should be executed?
- Should counterparties be permitted to agree expressly that certain life cycle events (such as assignment of payable rights), do not require subsequent confirmations? Are there life cycle events that can be carved out of the rule while still achieving the purpose of the rule? Should more time be permitted for confirmation of certain life cycle events, such as transfers resulting from a merger, consolidation, or transfer of all assets to another entity?
- Should the Commission require that electronic matching services or confirmation platforms be used where reasonably practicable?
- Does the term "processed electronically" require more clarification? If so, what definition would be effective and flexible enough to accommodate future market innovation?
- Should the Commission require that all swaps be processed electronically?
- Are there circumstances where swap dealers and major swap participants have the ability to process a transaction electronically, but should not be required to do so?
- Has the Commission properly accounted for current industry practice with respect to the time necessary to confirm swap transactions?
- Would the proposed rule unduly restrict the types of swaps that swap dealers and major swap participants may enter into or the persons that may be their counterparties?
- Should executing a swap on a SEF or DCM be deemed to satisfy the confirmation requirement?
- Should clearing a swap through a DCO be deemed to satisfy the confirmation requirement?
- Should the terms calendar day and business day be further defined and has the rule properly accounted for counterparties in different time zones executing swaps?

B. Swap Portfolio Reconciliation

1. Background

Section 4s(i) of the CEA directs the Commission to prescribe regulations for the timely and accurate confirmation, processing, documentation, and valuation of all swaps entered into by swap dealers and major swap participants. Disputes related to confirming the terms of a swap, as well as swap valuation disputes,[14] have long been recognized as a significant problem in the OTC derivatives market. Portfolio reconciliation is considered an effective means of identifying and resolving these disputes. Specifically, portfolio reconciliation is a post-execution processing and risk management technique that is designed to: (1) Identify and resolve discrepancies between the counterparties with regard to the terms of a swap either immediately after execution or during the life of the swap; (2) ensure effective confirmation of all the terms of the swap; and (3) identify and resolve discrepancies between the counterparties regarding the valuation of the swap. In some instances, portfolio reconciliation also may facilitate the identification and resolution of discrepancies between the counterparties with regard to valuations of collateral held as margin.

The Commission recognizes that the industry has made significant progress in adopting the use of portfolio reconciliation to decrease the number of swap disputes.[15] In December 2008, the ODSG's group of 14 major dealers committed to execute daily portfolio reconciliations for collateralized portfolios in excess of 500 trades between participating dealers by June of 2009.[16] As of May 2009, all participating dealers were satisfying this commitment. In October 2009, the

[14] *See* ISDA Collateral Committee, "Commentary to the Outline of the 2009 ISDA Protocol for Resolution of Disputed Collateral Calls," June 2, 2009 (stating "Disputed margin calls have increased significantly since late 2007, and especially during 2008 have been the driver of large (sometimes > $1 billion) un-collateralized exposures between professional firms.").

[15] The Commission also recognizes and encourages the industry practice of immediately transferring undisputed collateral amounts.

[16] *See* June 2, 2009 summary of industry commitments, available at *http://www.isda.org/c_and_a/pdf/060209table.pdf.*

ODSG committed to publishing a feasibility study on market-wide portfolio reconciliation that would set forth how regular portfolio reconciliation could be extended beyond the ODSG dealers to include smaller banks, buy-side participants, and derivative end users. Consistent with this publication, the ODSG dealers expanded their portfolio reconciliation commitment in March 2010 to include monthly reconciliation of collateralized portfolios in excess of 1,000 trades with any counterparty. Most recently, the industry has been preparing a new "Convention on the Investigation of Disputed Margin Calls" and a new "Formal Market Polling Procedure" that are intended to "create a consistent and predictable process * * * that eliminates present uncertainties and delays."[17]

Accordingly, the Commission is proposing § 23.502, which would require swap dealers and major swap participants to reconcile their portfolios with one another and provide counterparties who are not registered as swap dealers or major swap participants with regular opportunities for portfolio reconciliation. In order for the marketplace to realize the full risk reduction benefits of portfolio reconciliation, the Commission is proposing to expand portfolio reconciliation to all transactions, whether collateralized or uncollateralized. For the swap market to operate efficiently and to reduce systemic risk, portfolio reconciliation should be a proactive process that delivers a consolidated view of counterparty exposure down to the transaction level. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, overall risk can be identified and reduced.

2. Proposed Portfolio Reconciliation Rule

For the purposes of proposed § 23.502, swap portfolio reconciliation would be defined in proposed § 23.500 as a process by which the two parties to one or more swaps: (1) Exchange the terms of all swaps in the portfolio between the parties; (2) exchange each party's valuation of each swap in a portfolio between the parties as of the close of business on the immediately preceding business day; and (3) resolve any discrepancy in material terms and valuations. Valuation would be defined in proposed § 23.500 as the current market value or net present value of a swap, and material terms would be defined as all terms of a swap required to be reported in accordance with part 45 of this chapter.

Proposed § 23.502(a) would require swap dealers and major swap participants to reconcile swap portfolios with other swap dealers or major swap participants with the following frequency: Daily for portfolios consisting of 300 or more swaps, at least weekly for portfolios consisting of 50 to 300 swaps, and at least quarterly for portfolios consisting of fewer than 50 swaps. Swap dealers and major swap participants would be required to resolve immediately any discrepancy in a material term identified as part of a portfolio reconciliation process. The Commission is proposing an immediate resolution requirement for material terms for the same reasons that necessitate timely confirmation—parties need to know the terms of their executed agreements with one another. A discrepancy in the terms of a swap likely indicates that the parties have failed to confirm the swap in accordance with Commission regulations, and, therefore, the parties should take immediate action to resolve the discrepancy. This requirement would support and ensure compliance with proposed § 23.501, which requires a confirmation of all terms of a swap.

The Commission believes that requiring reconciliation of all swap portfolios among swap dealers and major swap participants (rather than only collateralized portfolios, as contemplated by the ODSG work) is appropriate because CEA section 4s(e) requires that swap dealers and major swap participants will be subject to minimum capital and margin requirements. As a result, the Commission anticipates that most, if not all, swaps entered by swap dealers and major swap participants will be subject to some form of collateralization. The Commission also believes that requiring more frequent reconciliation of smaller portfolios is appropriate because section 2(a)(13)(G) of the CEA requires all swaps to be reported to a registered swap data repository, and, therefore, the Commission anticipates that swap dealers and major swap participants will be able to efficiently reconcile their internal records with their counterparties electronically by reference to data in the repositories. The threshold of 300 swaps for daily reconciliation is intended to capture swap portfolios where there is a high likelihood that the swap dealer or major swap participant's counterparty will have the technological capacity to perform reconciliation processes electronically.

Under proposed § 23.502(a)(5), swap dealers and major swap participants would be required to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation process within one business day. The Commission recognizes that there may be reasonable grounds for some variation in the calculation of swap valuation at any given time. Consequently, the proposed rule would not require that swap dealers and major swap participants expend resources to resolve all discrepancies in the valuation of the swap, but only if the difference between the lower valuation and the higher is greater than 10%.

In addition, given that there are a number of services and industry-led initiatives that may facilitate resolution of valuation disputes, at this time the Commission is not proposing to mandate that swap dealers and major swap participants implement any specific procedure for resolution of a discrepancy in the valuation of a swap. Rather, it is only proposing a deadline for dispute resolution of one business day following discovery of such discrepancy.

For swap portfolios with entities other than swap dealers or major swap participants, proposed § 23.502(b) would require swap dealers and major swap participants to establish written policies and procedures to perform reconciliation, but would not prescribe the manner in which the reconciliation must be performed. For example, the exchange of terms and valuations between the counterparties may consist of one party reviewing the details and valuations delivered by the other party and either affirming or objecting to such details and valuations. The frequency parameters of portfolio reconciliation would be similar to those for swap portfolios between swap dealers or major swap participants.[18] There are some important distinctions in the proposed treatment of swap portfolios between a swap dealer or major swap participant and others that promote flexibility for those entities that will not be registered with the Commission. Swap dealers and major swap participants would be required simply to establish written procedures reasonably designed to resolve any discrepancies in the material terms or valuation of each swap identified as part

[17] *See* "ISDA 2010 Convention on the Investigation of Disputed Margin Calls" and "ISDA 2010 Formal Market Polling Procedure."

[18] The frequency thresholds are similar: Daily for portfolios consisting of 500 or more swaps, at least weekly for portfolios consisting of 100–500 swaps, and at least quarterly for portfolios consisting of less than 100 swaps.

of a portfolio reconciliation process in a timely fashion. Again, differences in valuation of a swap need not be deemed a discrepancy unless the difference between the lower valuation and the higher valuation is greater than 10% of the higher valuation.

Proposed § 23.502(c) would create a safe harbor for cleared swaps because portfolio reconciliation is needed primarily for uncleared swaps. When swaps are cleared, the clearinghouse requires that each swap be matched prior to novation by the clearinghouse. Moreover, once cleared, clearinghouses determine daily settlement prices, which preclude any valuation disputes.

The proposed rule would apply to all swaps within a swap portfolio as of the effective date of the regulation.

Finally, proposed § 23.502(d) would require that swap dealers and major swap participants maintain records of each discrepancy identified during portfolio reconciliation and the length of time taken to resolve that discrepancy.

3. Comments Requested

The Commission requests comment on all aspects of proposed § 23.502(d). In particular, the Commission requests comment on the following questions:

- Are the proposed deadlines for swap portfolio discrepancy resolution in the proposed regulation appropriate?
- Are the reconciliation thresholds and frequency requirements appropriate?
- Are swap dealers and major swap participants likely to have a large number of counterparties with whom they would be required to perform daily reconciliation that do not have the technological capacity to perform reconciliation processes electronically?
- Is the proposal that a valuation difference of less than 10% not be deemed to be a discrepancy appropriate? If not, please provide a suggested valuation discrepancy threshold.
- Should the proposed rule include a provision that requires discrepancy resolution if the aggregate of valuation differences of less than 10% across a portfolio exceeds a certain threshold? If so, please provide a suggested threshold.
- How would the requirement to resolve valuation discrepancies in one day for swaps among swap dealers and major swap participants affect the very detailed and complex industry initiatives currently being considered for resolving valuation disputes?
- Should all terms of a swap transaction be reconciled or just the key economic terms?
- Should all discrepancies in swap transaction terms be resolved or just the material ones?
- Should the definition of material terms be clarified?
- Should financial entities as defined in proposed § 23.500 be required to participate in portfolio reconciliation under proposed § 23.502(a)?

C. Portfolio Compression

1. Background

Section 4s(i) of the CEA directs the Commission to prescribe regulations for the timely and accurate processing and netting of all swaps entered into by swap dealers and major swap participants. Portfolio compression is an important, post-trade processing and netting mechanism that can be an effective and efficient tool for the timely and accurate processing and netting of swaps by market participants. Accordingly, the Commission is proposing § 23.503, which would require swap dealers and major swap participants to engage in certain bilateral and multilateral portfolio compression exercises.

Portfolio compression is a mechanism whereby substantially similar transactions among two or more counterparties are terminated and replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost, and inefficiency of maintaining unnecessary transactions on the counterparties' books. In many cases, these redundant or economically-equivalent positions serve no useful business purpose, but can create unnecessary risk,[19] as well as operational and capital inefficiencies. In a portfolio compression exercise, swap market participants whose combined portfolios include outstanding transactions that contain substantially similar economic terms and/or that would result in redundant payments wholly or partially net their swaps by terminating the original swaps and replacing them with a smaller number of new transactions that have a lower gross notional value.

Market vendors assert that as many as 40,000 trades can be terminated in a single portfolio compression cycle.[20] Because portfolio compression participants are permitted to establish their own credit, market, and cash payment risk tolerances and to establish their own mark-to-market values for the transactions to be compressed, the process does not alter the risk profiles of the individual participants beyond a level acceptable to the participant.

Portfolio compression exercises can be performed on a bilateral or multilateral basis. Multilateral compression exercises are preferable because the larger number of participants significantly increases the number of trades that can be eliminated and removes the need for bilateral negotiation between counterparties. In a multilateral portfolio compression exercise, the replacement swaps may be with the same or different counterparties.

The benefits of portfolio compression to both individual market participants and to the market as a whole are considerable. The reduced transaction count decreases operational risk generally as there are fewer trades to maintain, process, and settle.[21] The reduction in the outstanding gross notional value of the swaps also allows for increased capital liquidity and efficiency. Firms can set aside less capital for their positions while maintaining their desired risk positions in the market. The diminished operational risk for the individual market participants achieved by portfolio compression, in turn, may lessen systemic risk and enhance the overall stability of the financial markets. Compression also may provide a more accurate expression of overall market size and composition, and provide market participants with a more precise picture of their exposures.

The usefulness of portfolio compression as a risk management tool has been acknowledged widely. In 2008, the PWG identified frequent portfolio compression of outstanding trades as a key policy objective in the effort to strengthen the OTC derivatives market infrastructure.[22] Similarly, the 2010 staff report outlining policy perspectives on OTC derivatives infrastructure issued by the FRBNY identified trade compression as an element of strong risk management and recommended that market participants engage in regular, market-wide portfolio compression exercises.[23]

The value of portfolio compression also is illustrated by existing market participation in compression exercises.

[19] Federal Reserve Bank of New York Staff Report No. 424: "Policy Perspectives on OTC Derivatives Market Infrastructure," Jan. 2010 (revised Mar. 2010).

[20] *See http://www.trioptima.com.*

[21] *See* "ISDA 2009 A Yearbook of ISDA Activities," International Swaps and Derivatives Association, Inc. (2009).

[22] "Policy Objectives for the OTC Derivatives Markets," President's Working Group on Financial Markets (Nov. 14, 2008).

[23] Federal Reserve Bank of New York Staff Report No. 424: "Policy Perspectives on OTC Derivatives Market Infrastructure," Jan. 2010 (revised Mar. 2010).

In March 2010, the Depository Trust and Clearing Corporation (DTCC) explicitly attributed the reduction in the gross notional value of the contracts in its warehouse to industry supported portfolio compression.[24] TriOptima, which offers the TriReduce portfolio compression service, estimates that it has terminated $106.3 trillion gross notional of interest rate swaps and $66.9 trillion gross notional of credit swaps since its inception in 2003.[25] Similarly, Creditex and Markit, which offer portfolio compression exercises in single name credit default swaps, have enabled participating institutions to eliminate $4.5 trillion in notional between late 2008 through 2009.[26]

2. Proposed Compression Rule

Based upon these considerations, the Commission is proposing § 23.503, which would impose certain portfolio compression requirements upon swap dealers and major swap participants. Specifically, swap dealers and major swap participants would be required to participate in multilateral compression exercises that are offered by those DCOs or self-regulatory organizations of which the swap dealer or major swap participant is a member. The Commission would encourage swap dealers and major swap participants to work with the DCOs and self-regulatory organizations of which they are members to develop portfolio compression opportunities.

The portfolio compression obligation would be limited to swaps in which the counterparty is also a swap dealer or major swap participant and swaps that are eligible for inclusion in the exercise, as determined by those conducting the compression exercise and agreed to by those participating in the exercise. A swap dealer or major swap participant would be permitted to exclude swaps from a compression exercise if including the swap would be reasonably likely to increase significantly the risk exposure of the swap dealer or major swap participant. A swap dealer or major swap participant also would be permitted to establish counterparty, market, cash payment, and other risk tolerances and to exclude potential counterparties from the compression exercise, provided that the swap dealer or major swap participant is not using the risk tolerances or counterparty exclusions to evade the compression requirements.

In recognition that portfolio compression currently is not available for all asset classes and all transactions within an asset class,[27] the Commission also is proposing that swap dealers and major swap participants be required to terminate bilaterally all fully offsetting swaps between them by the close of business on the business day following the day the parties entered into the offsetting swap transaction and to engage annually in bilateral portfolio compression exercises with counterparties that are also swap dealers or major swap participants. Swap dealers and major swap participants need not engage in bilateral portfolio compression exercises, however, to the extent that the counterparties have mutually participated in a multilateral exercise involving the swaps between them during the same year.

The Commission anticipates that portfolio compression exercises will be offered by additional vendors and will encompass additional products and asset classes as the industry progresses toward increased product standardization and centralized clearing. To afford the Commission the flexibility to react to the expected future availability and need for portfolio compression exercises, proposed § 23.503 also would require swap dealers and major swap participants to participate in all multilateral portfolio compression exercises required by Commission regulation or order.

Proposed § 23.503 would not mandate portfolio compression exercises for swaps outstanding between a swap dealer or a major swap participant and counterparties that are neither swap dealers nor major swap participants. Instead, swap dealers and major swap participants would be required to maintain written policies and procedures for periodically terminating all fully offsetting swaps and periodically engaging in compression exercises.

The proposed rule would apply to all swaps within a swap portfolio as of the effective date of the regulation.

3. Comments Requested

The Commission is requesting comment on all aspects of the portfolio compression rule, and specifically requests comment on the following questions:

- Should the Commission require swap dealers and major swap participants to engage in bilateral and multilateral compression exercises, particularly with respect to transactions where the counterparty is not a swap dealer or major swap participant?
- Should the compression requirement be restricted to particular asset classes?
- With what frequency should bilateral or multilateral compression be required?
- What are the costs associated with engaging in bilateral and multilateral compression and are such costs a barrier to participation?
- Should the Commission expressly define the transactions that are eligible for inclusion in a portfolio compression exercise or leave that determination to those conducting the compression exercise and/or to those participating in the exercise?
- What factors (*e.g.,* sufficiently standardized terms) would render a particular swap eligible or ineligible for inclusion in a bilateral or multilateral compression exercise?
- Should the Commission provide specific risk management, accounting, regulatory, and other rationale under which a swap dealer or major swap participant may exclude particular swaps transactions from a multilateral portfolio compression exercise?
- How much time would be sufficient to allow swap dealers and major swap participants to come into compliance with the proposed portfolio compression requirements?
- Should the Commission require participation in compression exercises conducted only by registered derivatives clearing organizations or by all central counterparties of which the swap dealer or major swap participant may be a member?
- Should financial entities as defined in proposed § 23.500 be subject to the provisions of § 23.503(a), (b), and (c)?

[24] DTCC Press Release, "DTCC Trade Information Warehouse Completes Record Year Processing OTC Credit Derivatives" (Mar. 11, 2010). Notably, beginning in August 2008, ISDA encouraged compression exercises for credit default swaps by selecting the service provider and defining the terms of service.

[25] *See http://www.trioptima.com.* Between 2007 and 2008, TriOptima reduced $54.7 trillion gross notional of interest rate swaps and $49.1 trillion gross notional of credit swaps. In March of 2010, the staff of the Federal Reserve Bank of New York estimated that since 2008 nearly $50 trillion gross notional of credit default swap positions has been eliminated through portfolio compression. Federal Reserve Bank of New York Staff Report No. 424: "Policy Perspectives on OTC Derivatives Market Infrastructure," Jan. 2010 (revised Mar. 2010).

[26] *See http://www.isdacdsmarketplace.com.*

[27] At the present time, the principal portfolio compression vendors offer compression exercises for limited types of trades in a limited number of asset classes. Compression currently is available for certain interest rate swaps and credit default swaps and, to a lesser degree, specific energy products. For example, TriOptima's TriReduce service provides portfolio compression services for: (1) Interest rate swap transactions in twenty-three currencies; (2) credit default swaps (index, single name, and tranches); and (3) a more limited number of energy products. Markit and Creditex offer portfolio compression for credit default swaps.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities.[28] The Commission previously has established certain definitions of "small entities" to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[29] The proposed rules would affect swap dealers and major swap participants.

Swap dealers and major swap participants are new categories of registrants. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. However, the Commission previously has determined that futures commission merchants should not be considered to be small entities for purposes of the RFA.[30] The Commission's determination was based, in part, upon the obligation of futures commission merchants to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of futures commission merchants generally.[31] Like futures commission merchants, swap dealers will be subject to minimum capital and margin requirements and are expected to comprise the largest global financial firms. The Commission is required to exempt from swap dealer designation any entities that engage in a de minimis level of swaps dealing in connection with transactions with or on behalf of customers. The Commission anticipates that this exemption would tend to exclude small entities from registration. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that swap dealers not be considered "small entities" for essentially the same reasons that futures commission merchants have previously been determined not to be small entities and in light of the exemption from the definition of swap dealer for those engaging in a de minimis level of swap dealing.

The Commission also has previously determined that large traders are not "small entities" for RFA purposes.[32] In that determination, the Commission considered that a large trading position was indicative of the size of the business. Major swap participants, by statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that major swap participants not be considered "small entities" for essentially the same reasons that large traders have previously been determined not to be small entities.

Moreover, the Commission is carrying out Congressional mandates by proposing this regulation. Specifically, the Commission is proposing these regulations to comply with the Dodd-Frank Act, the aim of which is to reduce systemic risk presented by swap dealers and swap market participants through comprehensive regulation. The Commission does not believe that there are regulatory alternatives to those being proposed that would be consistent with the statutory mandate. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[33] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB has not yet assigned this collection a control number.

The collection of information under these proposed rules is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential to ensuring that swap dealers and major swap participants document the terms of all of their swaps, reconcile their swap portfolios to resolve any discrepancies or disputes, and wholly or partially terminate some or all outstanding swaps through regular compression exercises. Commission staff would use the information related to each of these important risk-reducing activities when conducting the Commission's examination and oversight program with respect to the registrants.

If the proposed regulations are adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

Proposed §§ 23.501, 23.502, and 23.503 would require swap dealers and major swap participants to make and retain records of confirmations, portfolio reconciliations, and portfolio compression exercises. The proposed regulations do not impose any reporting requirements. The proposed regulations will be an important part of the Commission's regulatory program for swap dealers and major swap participants. The information required to be preserved would be used by representatives of the Commission and any examining authority responsible for reviewing the activities of the swap dealer or major swap participant to ensure compliance with the CEA and applicable Commission regulations.

The annual burden associated with these proposed regulations is estimated to be 1,282.5 hours, at an annual cost of $1,282,250 for each swap dealer and major swap participant. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. Specifically, the Commission anticipates that swap dealers and major swap participants will spend an average of 40 hours per year drafting and

[28] 5 U.S.C. 601 *et seq.*

[29] 47 FR 18618, Apr. 30, 1982.

[30] *Id.* at 18619.

[31] *Id.*

[32] *Id.* at 18620.

[33] 44 U.S.C. 3501 *et seq.*

updating the policies and procedures required by the proposed regulations; 252 hours per year making and retaining the acknowledgment and confirmation records required by proposed § 23.501; 812 hours per year making and retaining the portfolio reconciliation records required by proposed § 23.502; and 178.5 hours per year making and retaining the bilateral offset and portfolio compression records required by proposed § 23.503.

It is not currently known how many swap dealers and major swap participants will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective after July 16, 2011, the date on which the Dodd-Frank Act becomes effective. While the Commission believes there will be approximately 200 swap dealers and 50 major swap participants, it has taken a conservative approach, for PRA purposes, in estimating that there will be a combined number of 300 swap dealers and major swap participants who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics findings, the mean hourly wage of an employee under occupation code 11–3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $74.41.[34] Because swap dealers and major swap participants include large financial institutions whose operations management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of $100 per hour.

Accordingly, the estimated burden was calculated as follows:

Drafting and Updating Policies and Procedures. This hourly burden arises from the time necessary to develop and periodically update the policies and procedures required by the proposed regulations.

Number of registrants: 300.

Frequency of collection: Initial implementation, updating as needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 300.

Estimated annual hour burden per registrant: 40 hours.

Estimated aggregate annual hour burden: 12,000 burden hours [300 registrants × 40 hours per registrant].

Acknowledgment and Confirmation Recordkeeping. This hourly burden arises from the proposed requirement that swap dealers and major swap participants make and maintain records of the date and time of transmission to, or receipt from, a counterparty of an acknowledgment or confirmation; the length of time between the acknowledgment and confirmation of each swap; and the length of time between execution and confirmation of each swap.

Number of registrants: 300.

Frequency of collection: daily.

Estimated number of annual responses per registrant: 252 [252 trading days].

Estimated aggregate number of annual responses: 75,600 [300 registrants × 252 trading days].

Estimated annual hour burden per registrant: 252 [252 trading days × 1 hour per day].

Estimated aggregate annual hour burden: 75,600 burden hours [300 × 252 hours].

Portfolio Reconciliation Recordkeeping. This hourly burden arises from the proposed requirement that swap dealers and major swap participants make and maintain records of the portfolio reconciliation exercises in which they engage. Registrants would be required to reconcile portfolios with counterparties that are swap dealers and major swap participants on a daily, weekly, or quarterly basis, depending upon the size of the portfolio. They also would be required to maintain policies and procedures for conducting portfolio reconciliation with other counterparties with similar frequency.

Number of registrants: 300.

Frequency of collection: daily, weekly, or quarterly.

Estimated number of annual responses per registrant: 8,120.[35]

Estimated aggregate number of annual responses: 2,436,000 [300 registrants × 8,120 responses].

Estimated annual hour burden per registrant: 812 hours [8,120 × .10 hours per response].

Estimated aggregate annual hour burden: 243,600 burden hours [300 registrants × 812 hours per registrant].

Portfolio Compression Recordkeeping. This hourly burden results from the proposed requirement that swap dealers and major swap participants make and maintain records of the bilateral offsets and portfolio compression exercises in which they participate, including the beginning and completion dates; the swaps that were included and excluded; the applicable risk tolerance levels; and the results of the particular exercise. The proposed regulations would require that each swap dealer and major swap participant terminate fully offsetting swaps; participate in certain multilateral compression exercises; and participate in annual bilateral portfolio compression exercises with each counterparty that is also a swap dealer or major swap participant (except to the extent that the counterparties participate in multilateral compression exercises for the same swaps). Swap dealers and major swap participants also would be required to maintain policies and procedures for periodically engaging in portfolio compression exercises with other counterparties.

Number of registrants: 300.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1,029 [24 multilateral compression records [36]] + [465 bilateral compression exercise

[34] *http://www.bls.gov/oes/current/oes113031.htm.*

[35] Due to the absence of prior experience in regulating swap dealers and major swap participants and with regulations similar to the proposed rules, the actual, average number of counterparties that a swap dealer or major swap participant is likely to have and the average size of its portfolio with particular counterparties is uncertain. The estimate of 5,600 portfolio reconciliation records is based upon the assumption that each swap dealer and major swap participant engages in swap transactions with approximately one third (100) of the other swap dealers or major swap participants and that 10% of such portfolios would require daily reconciliation; 20% would require weekly reconciliation; and 70% would require quarterly reconciliation. The estimate also is based upon the assumption that a swap dealer or major swap participant has an average of 440 other counterparties and that all of the portfolios with those counterparties generally would be limited to quarterly reconciliation. Consistent with other proposed rulemakings, the Commission has estimated that each of the 14 major swap dealers has an average 7,500 counterparties and the other 286 swap dealers and major swap participants have an average of 200 counterparties per year, for an average of 540 total counterparties per registrant. The Commission estimates that 440 of those counterparties would not be other swap dealers or major swap participants.

[36] This estimate assumes that swap dealers and major swap participants would engage in multilateral compression exercises for 2 asset classes at an average rate of 12 multilateral compression exercises per year (approximately 1 per month).

records [37] + [540 bilateral offset records [38]].

Estimated aggregate number of annual responses: 308,700 [300 registrants × 1,029 responses per year].

Estimated annual hour burden per registrant: 178.5 hours [24 multilateral compression records × .5 hours per records] + [465 bilateral compression exercise records × .3 hours per records] + [540 bilateral offset records × .05 hours per record].

Estimated aggregate annual hour burden: 53,550 burden hours [300 registrants × 178.5 hours per registrant].

Based upon the above, the aggregate hourly burden for all registrants is 334,350 hours and $33,435,000 [334,350 × $100 per hour].

In addition to the per hour burden discussed above, the Commission anticipates that swap dealers and major swap participants may incur minimal start-up costs in connection with the proposed recordkeeping obligations. Such costs would include the expenditures related to developing and installing new recordkeeping technology or re-programming or updating existing recordkeeping technology and systems to enable the swap dealer or major swap participant to collect, maintain, and re-produce any newly required records. The Commission believes that swap dealers and major swap participants generally could adapt their current infrastructure to accommodate the new or amended technology and thus, no significant infrastructure expenditures would be needed. The Commission estimates the programming burden hours associated with technology improvements to be 40 hours.

According to recent Bureau of Labor Statistics findings, the mean hourly wages of computer programmers under occupation code 15–1021 and computer software engineers under program codes 15–1031 and 1032 are between $34.10 and $44.94.[39] Because swap dealers and major swap participants generally will be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of $60 per hour. Accordingly, the start-up burden associated with the required technological improvements would be $2,400 [$60 × 40 hour per affected registrant] or $720,000 in the aggregate.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the recordkeeping burdens discussed above. The Commission specifically requests comment on the variables used in the above-referenced hourly burden calculations. For example, the Commission requests comment on the following:

- What is the total number of swap dealers and major swap participants in the marketplace?
- What is the average number of counterparties that a swap dealer or major swap participant is likely to have?
- What percentage of those counterparties are other swap dealers or major swap participants?
- What is the average size (number of swaps) of a portfolio that a swap dealer or major swap participant is likely to have with a particular type of counterparty?
- What is the average number of acknowledgment and confirmation records that a swap dealer or major swap participant would likely be required to make under the proposed regulations?

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission.

A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

C. Cost-Benefit Analysis

Section 15(a) of the CEA[40] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the rule outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions.

Section 15(a) further specifies that costs and benefits of a proposed rulemaking shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Summary of proposed requirements. The proposed regulations would implement new section 4s(i) of the CEA which was added by section 731 of the Dodd-Frank Act. The proposed regulations would set forth certain requirements for swap confirmations, portfolio reconciliation, and portfolio compression applicable to swap dealers

[37] As with other approximations set forth in this proposal, the estimate of 465 bilateral compression exercise records is based upon the assumption that each swap dealer and major swap participant engages in swap transactions with approximately one third (100) of the other swap dealers or major swap participants. Because it is anticipated that most swaps between swap dealers and major swap participants would be eligible for multilateral portfolio compression exercises, the Commission expects that a swap dealer or major swap participant would need to engage in annual bilateral compression with only one quarter of (25) such counterparties. The estimate also is based upon the assumption that the average swap dealer or major swap participant has an average of 440 non-swap dealer or major swap participant counterparties and would engage in 1 bilateral portfolio compression exercise with each. This would result in a total of 465 bilateral portfolio compression records (25 + 440).

[38] This estimate is based upon the assumption that each swap dealer and major swap participant will have an average of 1 set of swaps that is eligible for annual bilateral offset with each of its estimated 540 counterparties per year.

[39] *http://www.bls.gov/oes/current/oes113031.htm.*

[40] 7 U.S.C. 19(a).

and major swap participants and related recordkeeping requirements.

Costs. With respect to costs, the Commission has determined that the nominal cost that would be borne by swap dealers and major swap participants to institute the policies and procedures and recordkeeping systems necessary to satisfy the new regulatory requirements are far outweighed by the benefits that would accrue to the financial system as a whole as a result of the implementation of the rules. It is expected that any additional cost imposed by the confirmation, portfolio reconciliation, and portfolio compression requirements of proposed §§ 23.501, 23.502, and 23.503 would be minimal because the confirmation, reconciliation, and compression processes required under the rules are already part of a prudent operational processing regime that many, if not most, swap dealers and major swap participants already undertake as part of their ordinary course of business.

Moreover, most swap dealers and major swap participants have adequate resources and existing back office operational systems that are capable of adjusting to the new regulatory framework without material diversion of resources away from commercial operations. As discussed in the preamble, there are also numerous third-party vendors that provide confirmation, compression, and reconciliation services. Some of these providers charge fees based on results achieved (such as number of swaps compressed) and, thus, the cost would be necessarily proportionate to the benefit.

Benefits. With respect to benefits, the Commission has determined that the proposed regulations would require a swap dealer or major swap participant to confirm, reconcile, and compress their swaps in a manner that will result in reduced risk, increased transparency, and greater market integrity in the swaps market. The proposed swap confirmation, portfolio reconciliation, and portfolio compression rules would further the goal of avoiding market disruptions and financial losses to market participants and the general public. Among other benefits, the proposed rules would promote levels of operational scalability and resilience that are most evident in periods of sustained high volume and market volatility. Therefore, the Commission believes it is prudent to prescribe these proposed regulations.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commentators are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed rules with their comment letters.

List of Subjects in 17 CFR Part 23

Antitrust, Commodity futures, Conduct standards, Conflict of Interests, Major swap participants, Reporting and recordkeeping, Swap dealers, Swaps.

For the reasons stated in this release, the Commission proposes to amend 17 CFR part 23, as proposed to be added in FR Doc. 2010–XXXX, published on XXXX (75 FR XXXX), as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

2. Subpart I, (consisting of §§ 23.500, 23.501, 23.502, and 23.503) is added to read as follows:

Subpart I—Swap Documentation

Sec.

23.500 Definitions.
23.501 Swap confirmation.
23.502 Portfolio reconciliation.
23.503 Portfolio compression.

Subpart I—Swap Documentation

§ 23.500 Definitions.

For purposes of subpart I, the following terms shall be defined as provided.

(a) *Acknowledgment* means a written or electronic record of all of the terms of a swap signed and sent by one counterparty to the other.

(b) *Bilateral portfolio compression exercise* means an exercise in which two swap counterparties wholly or partially terminate some or all of the swaps outstanding between those counterparties and replace those swaps with a smaller number of swaps whose combined notional value is less than the combined notional value of the original swaps included in the exercise.

(c) *Confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the counterparties to all of the terms of a swap transaction. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise). A confirmation is created when an acknowledgment is manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

(d) *Execution* means, with respect to a swap transaction, an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law.

(e) *Financial entity* has the meaning given to the term in section 2h(7)(C) of the Act and any Commission regulations promulgated thereunder, provided that the term shall not include a swap dealer or major swap participant.

(f) *Fully offsetting swaps* means swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.

(g) *Material terms* means all terms of a swap required to be reported in accordance with part 45 of this chapter.

(h) *Multilateral portfolio compression exercise* means an exercise in which multiple swap counterparties wholly or partially terminate some or all of the swaps outstanding among those counterparties and replace the swaps with a smaller number of swaps whose combined notional value is less than the combined notional value of the original swaps included in the exercise. The replacement swaps may be with the same or different counterparties.

(i) *Portfolio reconciliation* means any process by which the two parties to one or more swaps:

(1) Exchange the terms of all swaps in the swap portfolio between the counterparties;

(2) Exchange each counterparty's valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and

(3) Resolve any discrepancy in material terms and valuations.

(j) *Processed electronically* means to be entered into a swap dealer or major swap participant's computerized processing systems to facilitate clearance and settlement.

(k) *Prudential regulator* has the meaning given to the term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant. The term also includes the Federal Deposit Insurance Corporation, with respect to any financial company as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any insured depository institution

under the Federal Deposit Insurance Act, and with respect to each affiliate of any such company or institution.

(l) *Swap portfolio* means all swaps currently in effect between a particular swap dealer or major swap participant and a particular counterparty.

(m) *Swap transaction* means any event that results in a new swap or in a change to the terms of a swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap.

(n) *Unwind proposal* means a proposal offered by the sponsor of a multilateral portfolio compression exercise which, if accepted, would wholly or partially terminate some or all of the original swaps included in the exercise.

(o) *Valuation* means the current market value or net present value of a swap.

§ 23.501 Swap confirmation.

(a) *Confirmation.*

(1) Each swap dealer and major swap participant entering into a swap transaction with a counterparty that is a swap dealer or major swap participant shall execute a confirmation for the swap transaction according to the following schedule:

(i) For any swap transaction that has been executed and processed electronically, within 15 minutes of execution;

(ii) For any swap transaction that is not executed electronically, but that will be processed electronically, within 30 minutes of execution; or

(iii) For any swap transaction that cannot be processed electronically by the swap dealer or major swap participant, within the same calendar day as execution.

(2) Each swap dealer and major swap participant entering into a swap transaction with a counterparty that is not a swap dealer or a major swap participant shall send an acknowledgment of such swap transaction according to the following schedule:

(i) For any swap transaction that has been executed and processed electronically, within 15 minutes of execution;

(ii) For any swap transaction that is not executed electronically, but that will be processed electronically, within 30 minutes of execution; or

(iii) For any swap transaction that cannot be processed electronically by the swap dealer or major swap participant, within the same calendar day as execution.

(3) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that it enters into with a counterparty that is a financial entity within the same calendar day as execution and with a counterparty that is not a swap dealer, major swap participant, or a financial entity not later than the next business day after execution. Such procedures shall include a requirement that, prior to execution of any such swap, the swap dealer or major swap participant furnish to a prospective counterparty, or receive from a prospective counterparty, a draft acknowledgment specifying all terms of the swap transaction other than the applicable pricing and other relevant terms that are to be expressly agreed at execution.

(b) *Recordkeeping.* (1) Each swap dealer and major swap participant shall make and retain a record of:

(i) The date and time of transmission to, or receipt from, a counterparty of any acknowledgment;

(ii) The date and time of transmission to, or receipt from, a counterparty of any confirmation;

(iii) The length of time between acknowledgment and confirmation of each swap; and

(iv) The length of time between execution and confirmation of each swap.

(2) All records required to be maintained pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v), to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

§ 23.502 Portfolio reconciliation.

(a) *Swaps with swap dealers or major swap participants.* Each swap dealer and major swap participant shall engage in portfolio reconciliation as follows for all swaps in which its counterparty is also a swap dealer or major swap participant.

(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a qualified third party.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each swap portfolio that includes 300 or more swaps;

(ii) Once each week for each swap portfolio that includes more than 50 but fewer than 300 swaps on any business day during any week; and

(iii) Once each calendar quarter for each swap portfolio that includes no more than 50 swaps at any time during the calendar quarter.

(4) Each swap dealer and major swap participant shall resolve immediately any discrepancy in a material term of a swap identified as part of a portfolio reconciliation.

(5) Each swap dealer and major swap participant shall resolve any discrepancy in a valuation identified as part of a portfolio reconciliation within one business day. A difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy.

(b) *Swaps with entities other than swap dealers or major swap participants.* Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures for engaging in portfolio reconciliation as follows for all swaps in which its counterparty is neither a swap dealer nor a major swap participant.

(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a qualified third party.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each swap portfolio that includes 500 or more swaps;

(ii) Once each week for each swap portfolio that includes more than 100 but fewer than 500 swaps on any business day during any week; and

(iii) Once each calendar quarter for each swap portfolio that includes no more than 100 swaps at any time during the calendar quarter.

(4) Each swap dealer or major swap participant shall establish, maintain, and enforce written procedures reasonably designed to resolve any discrepancies in the material terms or valuation of each swap identified as part of a portfolio reconciliation process in a timely fashion. A difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy.

(c) *Reconciliation of cleared swaps.* Nothing in this section shall apply to a

swap that is cleared by a derivatives clearing organization.

(d) *Recordkeeping.* A record of each swap portfolio reconciliation, including a record of each discrepancy and the length of time for resolution of each discrepancy not resolved within one business day, shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

§ 23.503 Portfolio compression.

(a) *Bilateral offset.* Each fully offsetting swap between a swap dealer or major swap participant and another swap dealer or major swap participant shall be terminated no later than the close of business on the business day following the day on which the counterparties entered into the fully offsetting swap.

(b) *Bilateral compression.* Each swap dealer and major swap participant shall engage in a bilateral portfolio compression exercise for each swap in which the counterparty is also a swap dealer or major swap participant at least once per calendar year, except to the extent that the swap dealer or major swap participant and the counterparty have participated in a multilateral compression exercise involving such swap during the same calendar year.

(c) *Multilateral compression.* Each swap dealer and major swap participant shall engage in the following portfolio compression exercises for each swap in which its counterparty is also a swap dealer or major swap participant:

(1) Each swap dealer and major swap participant shall participate in all multilateral portfolio compression exercises required by Commission regulation or order.

(2) Each swap dealer and major swap participant shall participate in all multilateral portfolio compression exercises that are initiated, offered, or sponsored by any of the following entities to the extent that any swap in the portfolio of the swap dealer or major swap participant is eligible for inclusion in the exercise:

(i) Any derivatives clearing organization of which the swap dealer or major swap participant is a member; or

(ii) Any self-regulatory organization of which the swap dealer or major swap participant is a member.

(3) Each swap dealer and major swap participant shall comply with the following with respect to each multilateral portfolio compression exercise in which it participates:

(i) *Transactions included.* Each swap dealer and major swap participant shall include in the multilateral portfolio compression exercise all swaps in which its counterparty is also a swap dealer or major swap participant that are eligible to be included in the particular exercise, unless including the swap would be reasonably likely to significantly increase the risk exposure of the swap dealer or major swap participant.

(ii) *Counterparty, market, and cash payment risk tolerances.* Notwithstanding § 23.503(c)(3)(i), a swap dealer or a major swap participant may establish counterparty, market, cash payment, or other risk tolerances or exclude specific potential counterparties, provided that the swap dealer or major swap participant does not use such risk tolerances or counterparty exclusions to evade the requirements of this regulation.

(iii) *Acceptance of unwind proposal.* No swap dealer or major swap participant shall unreasonably withhold, delay, or condition consent to an unwind proposal.

(d) *Policies and procedures.*

(1) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures for engaging in the bilateral and multilateral portfolio compression exercises required by this section with respect to all swaps in which its counterparty is also a swap dealer or major swap participant.

(2) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures for periodically terminating fully offsetting swaps and for periodically engaging in portfolio compression exercises with respect to swaps in which its counterparty is an entity other than a swap dealer or major swap participant, to the extent that the outstanding swaps are able to be terminated through a portfolio compression exercise.

(e) *Recordkeeping.* (1) Each swap dealer and major swap participant shall make and maintain a record of each bilateral offset and each bilateral or multilateral portfolio compression exercise in which it participates, including the beginning and completion dates of the offset or exercise; the included swaps and counterparties thereto; the swaps that were eligible for inclusion in the exercise, but were excluded by the swap dealer or major swap participant and the reason for the exclusion; the counterparty, market, cash payment, or other risk tolerance levels set by the swap dealer or major swap participant; and the results of the compression, including the identification of the swaps that were terminated and any new swaps and the counterparties thereto that resulted from the exercise.

(2) All records required to be maintained pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

Issued in Washington, DC on December 16, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants—Commissioners Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commissioners Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking that establishes essential business conduct standards for swap dealers and major swap participants. Today's rule establishes confirmation, portfolio reconciliation and portfolio compression requirements for such parties. The proposed regulations are consistent with Congress's direction through the Dodd-Frank Act to prescribe standards for the timely and accurate confirmation, processing, netting and valuation of swap transactions. One of the primary goals of Dodd-Frank Act was to establish a comprehensive regulatory framework that would reduce risk, increase transparency and promote market integrity. The proposed regulations accomplish this goal by establishing procedures that will promote legal certainty regarding swap transactions, early resolutions of valuation disputes, enhanced understanding of one counterparty's risk exposure to another, reduced operational risk and increased operational efficiency.

[FR Doc. 2010–32264 Filed 12–27–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 101130598–0598–01]

RIN 0625–AA87

Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed Rule; Proposed Modification; Request for Comments.

SUMMARY: The Department of Commerce ("the Department") is requesting comments regarding the calculation of the weighted average dumping margin and antidumping duty assessment rate in certain antidumping duty proceedings. Currently, in a review of an antidumping duty order conducted under 19 CFR 351.213 (administrative review), 351.214 (new shipper review), and 351.215 (expedited antidumping review) (collectively "reviews"), the Department usually makes comparisons between transaction-specific export prices and average normal values and does not offset any dumping that is found with the results of comparisons for which the transaction-specific export price exceeds the average normal value. In addition, in the most recent original antidumping duty investigation in which the Department calculated the weighted average margins of dumping using transaction-to-transaction comparisons, the Department did not grant offsets for non-dumped comparisons. Several World Trade Organization ("WTO") dispute settlement reports have found that the United States application of these methodologies was inconsistent with our WTO obligations. In response to these reports, the Department proposes modification of its methodologies, including changes to certain provisions of the Department's regulations.

DATES: To be assured of consideration, comments must be received no later than January 27, 2011.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2010–0011, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit the original and two copies of each set of comments by mail or hand delivery/courier to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625–AA87.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at *http://www.trade.gov/ia/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Quentin M. Baird, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0834.

SUPPLEMENTARY INFORMATION:

Background

In antidumping proceedings, the Department determines margins of dumping by comparing normal value with the export price [1] of comparable merchandise. Pursuant to 19 CFR 414(c)(2), in a review, the Department normally will compare normal value and export price using the average-to-transaction method, which involves a comparison of the weighted average normal value to export price of individual transactions for comparable merchandise. When determining the weighted average margin of dumping in a review, the Department aggregates the results of these comparisons and has not allowed the results of the comparisons for which export price exceeds normal value to offset the results of comparisons for which export price is less than normal value.[2] When determining importer-specific assessment rates in a review, the Department similarly aggregates the results of importer-specific comparisons and has not allowed the results of the comparisons for which export price exceeds normal value to offset the result of comparisons for which export price is less than normal value.

Pursuant to section 777A(d)(1)(A) of the Tariff Act of 1930 ("the Act"), in an investigation, the Department may determine whether the subject merchandise is being sold at less than fair value by comparing normal values of individual transactions to the export prices of individual transactions for comparable merchandise (the transaction-to-transaction comparison method).[3] The Department's regulations state that Department will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made. 19 CFR 351.414(c)(1). The Department has rarely applied the transaction-to-transaction comparison method in investigations. In the most recent investigation in which the Department calculated the weighted average margins of dumping using transaction-to-transaction comparisons, the Department did not grant offsets for non-dumped comparisons.[4]

The above methodologies have been challenged as being inconsistent with the World Trade Organization ("WTO") General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Implementation of Article VI of the GATT 1994 ("Antidumping Agreement"). In several disputes,[5] the

[1] The Department may also use constructed export prices, if appropriate. Because the use of export prices or constructed export prices is not relevant to the substance of this notice, the Department refers only to export prices hereafter.

[2] Section 771(35)(A) of the Act defines the dumping margin as the amount by which normal value "exceeds" export price (or constructed export price). Section 771(35)(B) defines the weighted average dumping margin as the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export or constructed export price of that exporter or producer.

[3] The Department's regulations also state that the Department normally will compare weighted average normal values to weighted average export prices for comparable merchandise (the average-to-average comparison method) in an investigation. 19 CFR 351.414(c)(1). In response to prior WTO dispute settlement reports, the Department modified its methodology for calculating the weighted average margin of dumping in an original investigation to no longer use average-to-average comparisons without providing offsets for non-dumped comparisons. *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification,* 71 FR 77,722 (December 27, 2006).

[4] *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act; Antidumping Measures Concerning Certain Softwood Lumber Products From Canada,* 70 FR 22,636 (May 2, 2005).

[5] *United States-Laws, Regulations and Methodology for Calculating Dumping Margins* ("*Zeroing*") ("US-Zeroing (EC)"), WT/DS294/R, WT/

Continued

WTO Dispute Settlement Body has adopted dispute settlement panel reports, as modified by the WTO Appellate Body, which found denial of offsets for non-dumped comparisons in reviews to be inconsistent with the United States' WTO obligations. The WTO Appellate Body also found denial of offsets for non-dumped comparisons in original investigations using transaction-to-transaction comparisons to be inconsistent with the United States' WTO obligations. In addition, certain of the Department's determinations made pursuant to section 751(c) of the Act (five-year reviews) were found to be inconsistent with the United States' WTO obligations insofar as those determinations relied on weighted average margins of dumping calculated using the methodologies found to be inconsistent with the United States' WTO obligations.

Proposal for Calculating the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings and Request for Comment

Pursuant to section 123(g)(1) of the Uruguay Round Agreements Act ("the URAA"), "[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements," certain requirements must be met before "that regulation or practice" may be "amended, rescinded, or otherwise modified * * *." Section 123(g)(1)(C) of the URAA requires that the Department provide opportunity for public comment by publishing "the proposed modifications and the explanation of the modification" in the **Federal Register**.

Pursuant to section 123(g)(1) of the URAA, by this notice the Department is proposing modifications to its practice in response to the following WTO dispute settlement findings. The WTO Appellate Body in *US-Zeroing (EC), US-Zeroing (Japan), US-Stainless Steel (Mexico), US-Continued Zeroing (EC)* found denial of offsets for non-dumped comparisons in antidumping duty administrative reviews to be inconsistent with Article 9.3 of the Antidumping Agreement and Article VI:2 of the GATT 1994, either "as such," or "as applied" in certain administrative reviews, or both.[6] In *US-Zeroing (Japan),* the WTO Appellate Body also found denial of offsets for non-dumped comparisons in antidumping duty original investigations using transaction-to-transaction comparisons was inconsistent with Articles 2.4 and 2.4.2 of the Antidumping Agreement.[7] In addition, in *US-Zeroing (Japan),* the WTO Appellate Body found denial of offsets for non-dumped comparisons in antidumping duty new shipper reviews was inconsistent with Articles 2.4 and 9.5 of the Antidumping Agreement.[8] Finally, in *US-Zeroing (EC), US-Zeroing (Japan), and US-Continued Zeroing (EC),* the WTO Appellate Body found reliance on weighted average margins of dumping calculated without granting offsets for non-dumped comparisons as the basis for determinations made in certain five-year (sunset) reviews was inconsistent with Article 11.3 of the Antidumping Agreement.[9]

In response to prior findings of inconsistency with respect to the Department's calculation of weighted average margins of dumping in original investigations, the Department previously modified its methodology such that it now provides offsets for non-dumped comparisons when using average-to-average comparisons in original investigations.[10] In response to the findings of inconsistency identified above, the Department now proposes to modify its methodology for calculating weighted average margins of dumping and assessment rates to provide offsets for non-dumped comparisons while using monthly average-to-average comparisons in reviews in a manner that parallels the WTO-consistent methodology the Department currently applies in original investigations. In particular, except where the Department determines that application of a different comparison method is more appropriate, in reviews, the Department proposes to compare monthly weighted average export prices with monthly weighted average normal values and to grant an offset for such comparisons that show export price exceeds normal value in the calculation of the weighted average margin of dumping and assessment rate. Where the weighted average margin of dumping is zero or *de minimis,* no antidumping duties will be assessed. In addition, to the extent that any prior original antidumping duty investigations using transaction-to-transaction comparisons could be considered as establishing a practice of the Department with respect to the granting or denial of offsets for non-dumped comparisons when calculating the weighted average margin of dumping,[11] the Department proposes to withdraw any such practice. With respect to the findings of inconsistency in certain of the Department's five-year (sunset) reviews, the Department notes that the underlying issue is the methodology for calculating weighted average dumping margins in investigations and reviews, which is addressed by the modifications the Department has made with respect to investigations and is proposing herein to make with respect to reviews. Moreover, the Department recognizes that while section 752(c) of the Act provides that the Department shall consider the weighted average dumping margins determined in the investigation and subsequent reviews, among other factors, the Act does not require the Department to rely on the weighted average dumping margins, or any particular weighted average dumping margin, as the basis for its determinations in five-year (sunset) reviews where such reliance would render the determination inconsistent with the United States' international obligations.

The modified methodology for reviews requires the Department to revise certain provisions of the Department's regulations. In particular, 19 CFR 351.414(a) and (c) indicate a preference for making "average-to-transaction" comparisons in administrative reviews. This proposed rule would revise these provisions to permit application of average-to-average comparisons in reviews in a manner that parallels the comparison methods used in original investigations. In addition, § 351.414(d)(3) and (e) of the Department's regulations set forth the time periods over which weighted

DS294/AB/R, adopted May 9, 2006; *United States-Measures Related to Zeroing and Sunset Reviews* ("US-Zeroing (Japan)"), WT/DS322/R, WT/DS322/AB/R, adopted Jan. 23, 2007; *United States-Final Anti-Dumping Measures on Stainless Steel from Mexico* ("US-Stainless Steel (Mexico)"), WT/DS344/R, WT/DS344/AB/R, adopted May 20, 2008; *United States-Continued Existence and Application of Zeroing Methodology* ("US-Continued Zeroing (EC)"), WT/DS350/R, WR/DS350/AB/R, adopted Feb. 19, 2009.

[6] *US-Zeroing (EC),* WT/DS294/R, WT/DS294/AB/R, para. 263 (a)(i); *US-Zeroing (Japan),* WT/DS322/R, WT/DS322/AB/R, para. 190 (c) & 190(e); *US-Stainless Steel (Mexico),* WT/DS344/R, WT/DS344/AB/R, paras. 165 (a) & 165 (b); *US-Continued Zeroing (EC),* WT/DS350/R, para. 8.1(e), WT/DS350/AB/R, paras. 395 (a)(v), 395 (d) & 395 (e)(ii).

[7] *US-Zeroing (Japan),* WT/DS322/AB/R, para. 190(b).

[8] *Id.,* para. 190(d).

[9] *US-Zeroing (EC),* WT/DS294/AB/RW, para. 469(h)(iv) & (vi); *US-Zeroing (Japan),* WT/DS322/AB/R, para. 190(f); *US-Continued Zeroing (EC),* WT/DS350/R, para. 8.1(f), WT/DS350/AB/R, para. 395(f).

[10] *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification,* 71 FR 77,722 (December 27, 2006).

[11] *US-Zeroing (Japan),* WT/DS322/AB/R, paras. 88, 138.

averages are calculated. Section 351.414(d)(3) provides that when applying the "average-to-average" method, the weighted averages will normally be calculated over the entire period of investigation or review, unless another averaging period is deemed appropriate. Section 351.414(e) provides that when applying the preferred "average-to transaction" method in a review, the Department will calculate weighted average normal values on a monthly basis. The Department proposes to modify § 351.414(d)(3) to permit weighted averages to normally be calculated on a monthly basis in reviews, regardless of the comparison method used. Conforming changes to § 351.414(e) will ensure § 351.414(d)(3) and (e) do not contain redundant language. Proposed language for the modified provisions is set forth at the end of this notice.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than January 27, 2011.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at *http://www.trade.gov/ia/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov*.

Timetable

After considering all comments received, the Department intends to publish in the **Federal Register** a Final Rule and Final Modification regarding the calculation of the weighted average dumping margin and assessment rate in certain antidumping duty proceedings. *See* section 123(g)(1)(F) of the URAA (19 U.S.C. 3533(g)(1)(F)). Any changes in methodology will be applicable in any determinations made pursuant to section 129 of the URAA (19 U.S.C. 3538) in connection with the above-referenced WTO disputes, and in all reviews pending before the Department for which a preliminary results is issued more than 60 business days after the date of publication of the Department's Final Rule and Final Modification.

Classification

Executive Order 12866

The proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. An explanation of the provisions that would be implemented by this rule is provided in the preamble and is not repeated here. The entities that could be impacted by this rulemaking include U.S. importers of merchandise subject to antidumping duty orders. Currently, the Department is not able to estimate the number of small entities that will be impacted by this proposed rule, but the Department anticipates that some of the entities affected by the proposed rule may be considered small entities under the SBA small business standard. However, the Department has determined that the proposed rule will not adversely impact small business entities. The proposed rule, by granting offsets in the calculation of the dumping margin and assessment rate, will not increase antidumping duty liability. Thus no Initial Regulatory Flexibility Act statement is required, nor has one been prepared.

Paperwork Reduction Act

The proposed rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: November 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

For the reasons stated, ITA proposes to amend 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

2. Section 351.414 is revised to read as follows:

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (*See* section 777A(d) of the Act.)

(b) *Description of methods of comparison*—(1) *Average-to-average method.* The "average-to-average" method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The "transaction-to-transaction" method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The "average-to-transaction" method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Choice of Method.* (1) In an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.

(2) The Secretary will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(d) *Application of the average-to-average method*—(1) *In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an "averaging group." The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method in an investigation, the Secretary normally will calculate weighted averages for the entire period of investigation. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate. When applying the average-to-average method in a review, the Secretary normally will calculate weighted averages on a monthly basis and compare the weighted-average monthly export price or constructed export price to the weighted-average normal value for the contemporaneous month.

(e) *Application of the average-to-transaction method*—In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(f) *Contemporaneous Month.* Normally, the Secretary will select as the contemporaneous month the first of the following months which applies: (1) The month during which the particular U.S. sales under consideration were made;

(2) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sales in which there was a sale of the foreign like product.

(3) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sales in which there was a sale of the foreign like product.

[FR Doc. 2010–32632 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 170, 184, 186, and 570

[Docket No. FDA–1997–N–0020; Formerly Docket No. 1997N–0103]

Substances Generally Recognized as Safe; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the proposed rule published in the **Federal Register** of April 17, 1997 (the 1997 proposed rule). The 1997 proposed rule would replace the voluntary petition process to affirm the generally recognized as safe (GRAS) status of a substance intended for use in food for humans or animals with a voluntary notification procedure. FDA is reopening the comment period to update comments. The proposed rule would also clarify the criteria for exempting the use of a substance as GRAS.

DATES: The comment period for the proposed rule published April 17, 1997 (62 FR 18938), is reopened. Submit either electronic or written comments on the proposed rule by March 28, 2011. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by February 28, 2011, (*see* the "Paperwork Reduction Act of 1995" section of this document).

ADDRESSES: You may submit comments, including comments regarding the proposed collection of information, identified by Docket No. FDA–1997–N–0020, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–1997–N–0020, for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, *see* the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *With regard to substances that would be used in human food:* Paulette M. Gaynor, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1192.

With regard to substances that would be used in food for animals: Geoffrey K. Wong, Center for Veterinary Medicine (HFV–224), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6879.

With regard to the information collection: Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION:

I. Background

In the 1997 proposed rule, FDA proposed to replace the voluntary GRAS affirmation petition process in §§ 170.35(c) and 570.35(c) (21 CFR 170.35(c) and 570.35(c)) with a voluntary notification procedure whereby any person may notify us of a determination that a particular use of a substance in human food (proposed § 170.36) or in food for animals (proposed § 570.36) is GRAS.[1] We also proposed to clarify the criteria in §§ 170.30 (21 CFR 170.30) and 570.30 (21 CFR 570.30) whereby the use of a substance is not subject to the premarket approval requirements of the FD&C Act because it is GRAS. To simplify the discussion in this document, in general,

[1] As an error, the authority citation we listed for the proposed amendments to part 570 (21 CFR part 570) did not include an existing authority citation, *i.e.,* section 408 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 346a). Nothing in the 1997 proposed rule would alter the citation to section 408. Therefore, the authority citation for part 570 will continue to include section 408.

we refer to provisions of the 1997 proposed rule and issues for further comment from the perspective of the regulations that would be established in part 170 (21 CFR part 170). Unless we say otherwise, however, the issues discussed also apply to the corresponding provisions for part 570.

Under the proposed notification procedure, a GRAS notice would include: (1) A "GRAS exemption claim" in which a notifier would take responsibility for a GRAS determination; (2) information about the identity of the notified substance, including information about the method of manufacture (excluding any trade secrets); (3) information about any self-limiting levels of use; and (4) a comprehensive discussion of the basis for the GRAS determination. We would evaluate whether the notice provides a sufficient basis for a GRAS determination and would respond to the notifier in writing. We would immediately make available to the public the notice's "GRAS exemption claim" and our response to the notice, and disclose other releasable information in a notice in accordance with our regulations, in part 20 (21 CFR part 20), implementing the Freedom of Information Act.

We invited interested persons who determine that a use of a substance is GRAS to notify us of those determinations, under the framework of the 1997 proposed rule, during the interim between the proposed and final rules (62 FR 18938 at 18954). We said that we would determine whether our experience in administering such notices suggested that modifications to the proposed notification procedure were necessary (62 FR 18938 at 18954). During the period from February 1, 1999, through December 31, 2009 (the interim period), our Center for Food Safety and Applied Nutrition (CFSAN) received approximately 26 GRAS notices per year about substances intended for use in human food. The Center for Veterinary Medicine (CVM) established a pilot notification program only recently. (*See* the **Federal Register** of June 4, 2010; 75 FR 31800.)

The memorandum in reference 1 of this document describes CFSAN's experience (through December 31, 2009). In the remainder of this document, we refer to this memorandum as the "experience document." Because CVM's pilot program began relatively recently, the experience document does not describe any experience under CVM's pilot notification program.

Also, from 2008 to 2010, the Government Accountability Office (GAO) conducted a study related to food ingredients determined to be GRAS and, in 2010, issued a report (Ref. 2, the GAO report) that included a number of recommendations for FDA's food ingredient program. FDA responded to the GAO's recommendations, and that response is also included in the GAO report.

II. Request for Comments

Because of the length of time that has elapsed since publication of the 1997 proposed rule, we are interested in updating comments before issuing a final rule. In addition, based on CFSAN's experience with GRAS notices during the interim period, comments we received on the proposed rule, and GAO's recommendations, we have identified a number of issues within the scope of the proposed rule that may require further clarification. Specifically, these issues relate to the proposed revisions to § 170.30 (Issue 1), the proposed establishment of a notification procedure (Issues 2 through 16), and the effect of the proposed notification procedure on existing GRAS petitions (Issue 17).[2] Accordingly, we are requesting comments on the entire 1997 proposed rule as well as on the specific issues identified in this document.

Comments previously submitted to the Division of Dockets Management (previously the Dockets Management Branch), including comments submitted to the Division of Dockets Management after the comment period closed on July 16, 1997, but before December 28, 2010, do not need to be resubmitted in response to this notice because all such comments will be considered in any final rule based on the 1997 proposed rule and this document.[3]

[2] With regard to GAO's recommendations, we are requesting comment on the recommendations that FDA obtain more information about the use of engineered nanomaterials (Issue 10(c)), that FDA strive to minimize the potential for conflict of interest (Issue 15), and that FDA issue guidance on how to document GRAS determinations (Issue 16). GAO also recommended that FDA develop a strategy to finalize the proposal to establish a notification program for GRAS ingredients, and this notice reopening the comment period is the first step of such a strategy. FDA is not seeking comment on the remaining GAO recommendations, that FDA request that any company conducting a GRAS determination provide the Agency with basic information about that determination, and that FDA develop a strategy to reconsider the safety of certain GRAS substances. We consider those recommendations, and any comments on them, to be beyond the scope of this comment request because they raise issues about matters other than how a notification program should be run.

[3] After we issued the 1997 proposed rule, a Presidential Memorandum dated June 1, 1998 (the Plain Language Memorandum) (Ref. 3) prescribed a government-wide initiative (the Plain Language Initiative, or "PLI") to write regulations using "Plain Language." As outlined in that memorandum, documents written in plain language use "you" and other pronouns. Any final rule based on the 1997 proposed rule and this document would use such pronouns.

A. Issue 1. Description of Common Knowledge Element and Related Definition of "Scientific Procedures"

In the 1997 proposed rule, we proposed to revise § 170.30 to broaden the description of the common knowledge element to clarify the types of technical evidence of safety that would form the basis of a GRAS determination, and to clarify the role of publication in satisfying the common knowledge element. Specifically, we proposed revising § 170.30(b) from "* * * ordinarily be based upon published studies which may be corroborated by unpublished studies and other data and information." to "based upon generally available and accepted scientific data, information, methods, or principles, which ordinarily are published and may be corroborated by unpublished scientific data, information, or methods." We also proposed a companion change to the definition of scientific procedures (§ 170.3(h)) from "Scientific procedures include those human, animal, analytical, and other scientific studies, whether published or unpublished, appropriate to establish the safety of a substance." to "Scientific procedures include scientific data (such as human, animal, analytical, or other scientific studies), information, methods, and principles, whether published or unpublished, appropriate to establish the safety of a substance."

Most of the comments addressing these proposed amendments supported the amendments. In general, these comments expressed the opinion that the proposed amendments would more accurately reflect the state of contemporary science than the provisions they would replace. One comment objected to the proposed amendment to § 170.30(b). This comment asserted that the proposed amendment would de-emphasize or eliminate the existing criterion for peer-reviewed studies. One comment objected to the proposed amendment to § 170.3(h) because, under the proposed amendment, an "unpublished principle" could inappropriately be considered a sufficient scientific procedure for demonstrating the safety of a food substance.

In light of these comments, we reviewed our proposed inclusion of scientific "principles" in the proposed amendments to §§ 170.3(h) and 170.30(b). "Principle" can be defined as

a fundamental cause or basis of something; a primary element, force, or law determining a particular result; or a fundamental truth or proposition on which others depend (Shorter Oxford English Dictionary, 5th Edition, 2002). Thus, a principle is a different genre than data, information, and methods and is, by its very nature, generally available and accepted. An "unpublished principle" is a non-sequitur. Therefore, the adjectives "published" and "unpublished" should not modify scientific "principles."

We also reviewed our use of the term "study" in the proposed companion change to the definition of scientific procedures. A procedure can be defined as a particular mode or course of action (Shorter Oxford English Dictionary, 5th Edition, 2002); a "study" can be defined as the devotion of time and attention to acquiring information or knowledge or as applying the mind to acquiring knowledge, especially devoting time and effort to this end (Id.). The terms "procedure" and "study" each carry the connotation of an action. However, "data and information" would be the outcome of a study or procedure and do not carry the connotation of an action. To be a "procedure," data, information, methods or principles would need to be acquired or applied.

We are seeking comment on the use of those terms. For example, we are considering whether to revise the second sentence of § 170.30(b) to require that general recognition of safety through scientific procedures be based upon the application of generally available and accepted scientific data, information, or methods, which ordinarily are published, as well as the application of scientific principles, and may be corroborated by the application of unpublished scientific data, information, or methods. We also are considering whether to revise the definition of scientific procedures to include the application of scientific data (including, as appropriate, data from human, animal, analytical, and other scientific studies), information, and methods, whether published or unpublished, as well as the application of scientific principles, appropriate to establish the safety of a substance.

B. Issue 2. Terms

In the 1997 proposed rule, we used the terms "determine" and "determination" to describe the action of a person who informs us that the use of a food substance is GRAS under the proposed notification procedure. However, as discussed in the experience document, during the interim period CFSAN responded to approximately 5 percent of submitted GRAS notices with a letter informing the notifier that the notice did not provide a basis for a "GRAS determination" (Ref. 1). Clearly, in these cases it was CFSAN's view that the notifier had not "determined" GRAS status. To clarify that the submission of a GRAS notice reflects the view of the notifier and may not necessarily provide an adequate basis for a GRAS determination, we have tentatively concluded that the terms "conclude" and "conclusion" in lieu of "determine" and "determination" would be more appropriate, and therefore in this document we use the terms "conclude" and "conclusion." We seek comment on these terms.

C. Issue 3. Definitions

In the 1997 proposed rule, we did not propose definitions of terms that would be associated with the GRAS notification procedure. However, it would be consistent with the Plain Language Initiative for a final rule to include definitions of terms used in the rule. While the meanings of some terms (such as "notified substance") were implicit in the discussion of the proposed notification procedure, to ensure the opportunity to comment on these definitions, we include them here. In addition, some terms not used in the 1997 proposed rule may be useful in light of comments already received. We seek comment on the definitions described in the following paragraphs.

(Issue 3a). "Amendment" and "supplement." Several comments asked FDA to allow a notifier to address questions FDA had about a GRAS notice by submitting an amendment to the notice. As discussed in the experience document (Ref. 1), during the interim period several notifiers submitted one or more amendments to their GRAS notices. We would define "amendment" to mean any data or other information that you submit regarding a filed GRAS notice before we respond to the notice.

As discussed in the experience document (Ref. 1), during the interim period several notifiers submitted information to a GRAS notice after CFSAN responded to the notice. We would define "supplement" to mean any data or other information that you submit regarding a filed GRAS notice after we respond to the notice.

(Issue 3b) "Notified substance," "notifier," and "qualified expert." We would define "notified substance" to mean the substance that is the subject of your GRAS notice. We would define "notifier" to mean the person who is responsible for the GRAS notice, even if another person (such as an attorney, agent, or qualified expert) prepares or submits the notice or provides an opinion about the basis for a conclusion of GRAS status. Consistent with section 201(s) of the FD&C Act (21 U.S.C. 321(s)), we would define "qualified expert" to mean an individual who is qualified by scientific training and experience to evaluate the safety of substances added to food.

D. Issue 4. Incorporation by Reference

One comment requested that a notifier be permitted to reference a previously submitted GRAS notice to support a view that an additional use of the applicable substance is GRAS. In the comment's view, this process, known as "incorporation by reference," would be administratively efficient. As discussed in the experience document (Ref. 1), during the interim period CFSAN encouraged notifiers to use a process such as that recommended in the comment.

We are therefore seeking comment on whether to include a provision in the final rule to expressly permit the notifier to incorporate by reference either data and information that were previously submitted by the notifier, or public data and information submitted by another party, when such data and information remain in our files, such as data and information contained in a previous GRAS notice, a food additive petition, or a food master file.

While the data and information in a previously submitted GRAS notice are generally publicly available, other data and information that have been submitted to us may be confidential. We do not anticipate that a notifier would have access to another party's confidential data or information.

We note that, regardless of whether a notifier incorporates by reference data or information, we may consider taking into account other relevant data or information that we have from other sources. As discussed in the experience document (Ref. 1), during the interim period CFSAN did review information that was available in its files but not available to the applicable notifier.

E. Issue 5. Request That FDA Cease To Evaluate a GRAS Notice

Several comments requested that the notification procedure provide for a notifier to withdraw a notice in light of our questions about the notice. These comments considered such a provision would provide the notifier with an opportunity to resubmit a notice addressing our questions.

Under § 20.29, no person may withdraw records submitted to FDA. While a notifier cannot withdraw a GRAS notice submitted to FDA, when

we issued the proposed rule, we considered a request that FDA cease to evaluate a GRAS notice to be an implicit prerogative not needing explicit authorization in the rule. For GRAS notices that FDA has ceased to evaluate at the request of the notifier, the GRAS notices remain in our files and, thus, are available for public disclosure, subject to procedures established in part 20.

As discussed in the experience document (Ref. 1), at the request of the notifier, CFSAN ceased to evaluate approximately 16 percent of GRAS notices that came to closure by December 31, 2009. Persons who rely only on the provisions of proposed § 170.36, without referring to our letters responding to GRAS notices, may not be aware of the implicit prerogative to request that FDA cease to evaluate a GRAS notice.

Therefore, we are seeking comment on whether the rule should explicitly state that you may request in writing that we cease to evaluate your GRAS notice at any time during our evaluation of your GRAS notice.

F. Issue 6. Notifier's Responsibility for a GRAS Conclusion

(Issue 6a) Under proposed § 170.36(c)(1), the GRAS notice would be dated and signed by the notifier or by the notifier's attorney or agent or (if the notifier is a corporation) by an authorized official. As discussed in the experience document (Ref. 1), during the interim period CFSAN received some GRAS notices in which the combination of an illegible signature and the lack of a typed or printed name to accompany the signature made it impossible to identify the person who was signing the document. Therefore, we are seeking comment on how to best ensure that the identity and authority of the person who is signing the GRAS notice is made clear. For example, we are considering requiring that the GRAS notice state the name and the position or title of the person who signs it.

(Issue 6b) Under the GRAS affirmation petition process, a petitioner is required to submit a petition for GRAS affirmation under 21 CFR part 10 (§ 170.35(c)(1)(v)). As part of this petition, a petitioner is required to submit a statement that, "to the best of his knowledge, it [the GRAS affirmation petition] is a representative and balanced submission that includes unfavorable information, as well as favorable information, known to him and pertinent to the evaluation of the safety of the substance." (§ 170.35(c)(1)(v)). We implicitly proposed this provision under proposed § 170.36(c)(4), which proposed to require, among other things, that a GRAS notice include a comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the conclusion of GRAS status. We are seeking comment on whether the GRAS notification procedure should be as explicit on this point as the GRAS affirmation petition process it would replace.

We also are seeking comment on whether to require a notifier to certify to this statement, which would be consistent with the certification in item *E. Certification* in § 10.30(b). Such certification also would be consistent with the procedures established for another notification program in CFSAN, the premarket notification program for food contact substances. (*See* § 171.101(e) and FDA Form No. 3480 (Ref. 4).)

G. Issue 7. Appropriately Descriptive Term for the Notified Substance

In the 1997 proposed rule, we proposed to require that the GRAS notice include the common or usual name of the notified substance (proposed § 170.36(c)(1)(ii)). We also advised that notifiers with questions concerning the common or usual name for a substance consult with CFSAN's Office of Food Labeling (now the Office of Nutrition, Labeling and Dietary Supplements) (for a substance that would be used in human food) or with CVM's Division of Animal Feeds (for a substance that would be used in animal food).[4] As discussed in the experience document (Ref. 1), in 2004, CFSAN began to routinely advise notifiers that its use of a particular term to identify the notified substance in a letter responding to a GRAS notice should not be considered an endorsement or recommendation of that term as an appropriate common or usual name for the purpose of complying with the labeling provisions of the FD&C Act.

A GRAS notice addresses sections 201(s) and 409 of the FD&C Act and does not address the labeling provisions of the FD&C Act or FDA's corresponding regulations. We are seeking comment on whether to revise proposed § 170.36(c)(1)(ii) to make this more clear. For example, instead of requiring that the GRAS notice include the common or usual name of the notified substance, we are considering requiring that the GRAS notice include the name of the notified substance, using an appropriately descriptive term. We note that this may be the same as the term which you may believe would be the common or usual name of the substance under 21 CFR parts 102 (human food) and 502 (animal food).

[4] For example, a notifier may have a question about the common or usual name where it is not established by regulation.

H. Issue 8. Public Disclosure

Under proposed § 170.36(f)(1), the elements listed in proposed § 170.36(c)(1)) would be immediately available for public disclosure on the date the notice is received. As a practical consequence of this proposed provision, the fact that we had received a GRAS notice (*i.e.,* the existence of the GRAS notice) would be immediately available to the public. As discussed in the experience document (Ref. 1), we have made this information readily accessible to the public. CFSAN currently is making a "GRAS Notice Inventory" available on its Internet site. CFSAN presents notice-specific information (such as the name and address of the notifier, the name of the notified substance, and the intended conditions of use) extracted from the information submitted under proposed § 170.36(c)(1). CFSAN expects that the ways by which we make this information readily accessible to the public will evolve over time.

Because, under proposed § 170.36(f)(1), the information submitted under proposed § 170.36(c)(1) would be immediately available for public disclosure, it is implicit in this provision that a person submitting information under proposed § 170.36(c)(1) should not include in this portion any non-public information such as trade secret information, confidential commercial or financial information, and personal privacy information. Based on our experience, notifiers did not identify any information in the information submitted under proposed § 170.36(c)(1) as being confidential. We are seeking comment on whether the final rule should explicitly require that the information submitted under proposed § 170.36(c)(1) exclude non-public information.

I. Issue 9. Including Confidential Information in a GRAS Notice

We proposed that the method of manufacture in a GRAS notice exclude any trade secrets (proposed § 170.36(c)(2)). However, we stated that a notifier who considers that certain information in a submission should not be available for public disclosure should identify as confidential the relevant portions of the submission for our consideration (62 FR 18938 at 18952). We further stated we would review the identified information, determine

whether that information is exempt from public disclosure under part 20 and release or protect the information in accordance with our determination. We advised that, in most cases, we would be likely to determine all information in a GRAS notice is available for public disclosure, because a conclusion of GRAS status must be based on generally available data and information.

We received several comments about whether confidential information should be included in a GRAS notice. In essence, these comments suggested that we both provide for the submission of trade secrets or other confidential information in a GRAS notice and protect the trade secrets or other confidential information from public disclosure, just as we would in the case of submissions such as food additive petitions.

As discussed in the experience document (Ref. 1), during the interim period CFSAN did accept some GRAS notices that included information identified by the notifier as confidential. When a GRAS notice included such information, in no case did CFSAN disclose the identified information. In some cases, including confidential information in a GRAS notice did not present a problem because it was corroborative information. However, in other cases CFSAN questioned whether there could be a basis for a conclusion of GRAS status if qualified experts generally did not have access to the confidential information.

In light of both the comments and CFSAN's experience, we are seeking comments relevant to including confidential information in a GRAS notice. We note that, while the decision to submit a GRAS notice would be voluntary, the provisions governing the GRAS notification procedure, including the information to be submitted, would be mandatory.

(Issue 9a) We are seeking comment on whether proposed § 170.36(c)(2) should stipulate that the method of manufacture exclude any trade secrets, as it was proposed.

(Issue 9b) We are seeking comment on whether to require that a notifier who identifies one or more trade secret(s), as defined in § 20.61(a), in the GRAS notice explain why it is trade secret information and how qualified experts could conclude that the intended use of the notified substance is GRAS without access to the trade secret(s).

(Issue 9c) We are seeking comment on whether to require that a notifier who identifies confidential commercial or financial information, as defined in § 20.61(b), in the GRAS notice explain why it is confidential commercial or financial information and how qualified experts could conclude that the intended use of the notified substance is GRAS without access to such information.

J. Issue 10. Describing the Identity of a Notified Substance

Under proposed § 170.36(c)(2), a GRAS notice would include "Detailed information about the identity of the notified substance, including, as applicable, its chemical name, Chemical Abstracts Service Registry Number, Enzyme Commission number, empirical formula, structural formula, quantitative composition, method of manufacture (excluding any trade secrets and including, for substances of natural biological origin, source information such as genus and species), characteristic properties, any content of potential human toxicants, and specifications for food-grade material."

(Issue 10a) Based on our experience, we have found that when the source of a notified substance is a biological material (*e.g.,* a plant, animal, or microorganism), taxonomic information about genus and species may be insufficient to identify a biological source. The experience document (Ref. 1) provides examples of GRAS notices including information such as genus, species, variety, strain, part of a plant source (such as fruit, seeds or seed husks, expressed oil, flowers, roots, leaves, pulp, wood, or bark), and part of an animal source (such as fluid, muscle mass, egg, shells, or extracted oil). We note that some GRAS substances are derived from animal organs (*e.g.,* the enzyme preparation "catalase" is manufactured from cow's liver (21 CFR 184.1034)) or tissue (*e.g.,* the enzyme preparation "animal lipase" is manufactured from edible forestomach tissue or from animal pancreatic tissue (21 CFR 184.1415)). We request comment on what scientific information would be sufficient to identify the biological source.

(Issue 10b) Based on our experience, we have found that information about substances known to be toxicants is relevant regardless of the state of the science regarding the specific toxicity of the substance to humans. For example, during the interim period CFSAN evaluated a GRAS notice about a substance derived from a biological source that is known to contain mutagenic substances (Ref. 1). Therefore, we are seeking comment on whether to require that information about the identity of the notified substance specify any known toxicants that could be in the source.

(Issue 10c) Substances that have a small particle size often have chemical, physical, or biological properties that are different from those of their larger counterparts (Ref. 5) and, thus, particle size and associated chemical and physical properties may be relevant to the identity of the notified substance. GAO's recent recommendations also encouraged us to obtain more information about the use of engineered nanomaterials (Ref. 2). Therefore, we are seeking comment on whether the final rule should address, as part of identity, particle size and other chemical and physical properties that may be used to characterize engineered materials.

K. Issue 11. Dietary Exposure

We proposed to require that a notice regarding a conclusion of GRAS status through scientific procedures include a comprehensive discussion of, and citations to, generally available and accepted scientific data, information, methods, or principles that the notifier relies on to establish safety, including a consideration of the "probable consumption of the substance and the probable consumption of any substance formed in or on food because of its use and the cumulative effect of the substance in the diet, taking into account any chemically or pharmacologically related substances in such diet" (proposed § 170.36(c)(4)(i)(A)). This proposed provision restated the statutory language of section 409(c)(5) of the FD&C Act regarding dietary exposure.

We proposed to require that a notice regarding a conclusion of GRAS status through experience based on common use in food include a comprehensive discussion of, and citations to, generally available data and information that the notifier relies on to establish safety, including evidence of a substantial history of consumption of the substance by a significant number of consumers [5] (proposed § 170.36(c)(4)(ii)(A)). This proposed provision was silent on the probable consumption of the substance by present-day consumers.

We are seeking comment on issues related to the proposed provisions for information about dietary exposure to a notified substance.

(Issue 11a) We are seeking comment on whether proposed § 170.36(c)(4)(i)(A) should continue to restate the statutory language of section 409(c)(5) of the FD&C Act or whether this provision should be stated more clearly, for example, by requiring information about

[5] In this document, references to "consumers" for the purposes of part 170 are references to "animals" for the purposes of part 570.

dietary exposure (*i.e.,* the amount of the notified substance that consumers are likely to eat or drink as part of a total diet).

(Issue 11b) Over 50 years have passed since passage of the 1958 Food Additives Amendment establishing the requirements for food additives and the corresponding provisions for GRAS substances in food. In evaluating whether use of a substance is GRAS through experience based on common use in food, we rely on information documenting that the "common use in food" of a substance satisfies the definition in § 170.3(f) such that adverse health effects, if they occurred, could be noted. In other words, a substance is not eligible for GRAS status merely because it was used in food before January 1, 1958, if such use were not sufficiently widespread (62 FR 18938 at 18949). Therefore, we are seeking comment on whether a GRAS notice should be required to include information about dietary exposure to contemporary consumers regardless of whether the determination of GRAS status is through scientific procedures or through experience based on common use in food.

(Issue 11c) Some substances are administered to certain animal species through their drinking water. Section 201(f) of the FD&C Act defines food as "articles used for food or drink for man or other animals." In the proposed rule, we utilized the terms, "foods" and "diet," when addressing the intended use and safety evaluation of notified substances. We are seeking comment on whether it is necessary to clarify that the GRAS notification procedure is applicable to substances used in both food and drinking water of animals and, if so, whether it would be necessary to clarify this in the provisions of proposed § 570.36.

(Issue 11d) Under proposed § 570.36(c)(1)(iii), notifiers would submit information about the applicable conditions of use of the notified substance, including a description of the population expected to consume the substance. For substances added to animal food, the applicable population is the specific animal species intended to consume the substance. Animal species differ in their physical characteristics, digestive physiology, and metabolic pathways. Therefore, a substance that is safe for use in one animal species may not be safe for use in other species, and FDA would need to know the intended species in order to properly evaluate the notifier's safety assessment of the intended use of the substance. We are seeking comment on whether it is necessary to clarify proposed § 570.36(c)(1)(iii) to explicitly require submission of information about the animal species expected to consume the substance.

(Issue 11e) Proposed § 570.36(c)(2) would require that notifiers submit detailed information about the notified substance, including any content of potential human or animal toxicants. Additionally, proposed §§ 570.36(c)(4)(i)(A) and (c)(4)(ii)(A) would require that notifiers submit a comprehensive discussion of, and citations to, the information that the notifier relies on to establish safety. Where a substance is intended for use in the food of an animal used to produce human food, these sections of the proposed rule would require that the notifier include citations to information about both target animal (*i.e.,* the specific animal species that are fed the notified substance) and human safety. The information provided would need to be sufficient to show that the use of the substance is generally recognized among qualified experts to be safe for animals consuming food containing the substance as well as for humans consuming food derived from such animals (*i.e.,* under its intended conditions of use). A GRAS notice for a substance intended for use in the food of an animal used to produce human food submitted without such information would likely receive a response from FDA stating that FDA has identified questions regarding whether the intended use of the substance is GRAS. (*See* the proposed rule (62 FR 18938 at 18950).) Therefore, we are seeking comment on whether it is necessary to clarify applicable sections of the proposed rule to explicitly require, for substances intended for use in the food of an animal used to produce human food, the submission of information about both target animal and human safety.

L. Issue 12. Filing Decision

Some comments to the 1997 proposed rule recommended that we conduct a preliminary review of a submission, before we file it as a GRAS notice, to determine whether it appears, on its face, to meet the format requirements. Some comments suggested that we "decline to file" a notice that appears to be inadequate, *e.g.,* because it lacks critical data or information. These comments considered that a preliminary review that resulted in a "filing decision" would be analogous to the current procedure whereby we review a GRAS affirmation petition to determine whether it appears, on its face, to meet the format requirements for the GRAS affirmation petition process.

As discussed in the experience document (Ref. 1), CFSAN routinely conducted such a preliminary review of each submitted GRAS notice. Based on our experience, it was the complete evaluation process that identified those data or information that are critical to establish GRAS status. Therefore, a decision on our part to file a submission as a GRAS notice has not reflected our judgment as to whether the notice addressed all issues or discussed all critical data or information.

We are seeking comment on whether we should make explicit the process by which FDA makes such a filing decision, including the factors we should use to determine whether to file a submission as a GRAS notice. Some potential factors could be the following:

- Whether your submission includes all required sections;
- Whether you provided all required copies;
- Where information provided is identified as being confidential, whether you explain the basis for your conclusion of GRAS status;
- Whether we still retain as a record any data or information that you ask us to incorporate by reference; and
- Whether the subject of your submission is: (1) Already authorized for use under our regulations or (2) a mixture of substances that are already authorized for use under our regulations. For example, if we receive a submission about a mixture of substances, each of which is affirmed as GRAS under 21 CFR part 184 for use as an antimicrobial in human food, and the intended use of the mixture is as an antimicrobial, we may treat the submission as general correspondence and inform the notifier that we do not devote resources to evaluating the use of such mixtures under the GRAS notification procedure.

M. Issue 13. Substances Intended for Use in Products Subject to Regulation by the U.S. Department of Agriculture

Subsequent to the 1997 proposal, we issued a final rule amending the GRAS affirmation petition process to provide for simultaneous review of a GRAS notice by FDA and the U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) when the intended use of the notified substance includes use in products subject to regulation by FSIS (65 FR 51758, August 25, 2000). Under § 170.35(c)(3)(i), we forward a copy of a GRAS affirmation petition to FSIS for simultaneous review under the Poultry Products Inspection Act (PPIA) (21 U.S.C 451 *et seq.*) or the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). Under

§ 170.35(c)(3)(ii), we ask USDA to advise whether the proposed uses comply with the FMIA or PPIA or, if not, whether use of the substance would be permitted in products under USDA jurisdiction under specified conditions or restrictions. The provisions of this review process reflect interagency coordination to ease the burden on regulated industries and consumers.

In addition, as discussed in the experience document (Ref. 1), during the interim period CFSAN developed a Memorandum of Understanding (MOU) with USDA's FSIS (65 FR 33330, May 23, 2000), which provides for the same coordinated review process for GRAS notices when the intended use of the notified substance includes use in products subject to regulation by FSIS. Under the terms of the MOU, CFSAN forwards a copy of an applicable GRAS notice to FSIS. CFSAN then simultaneously evaluates the basis for GRAS status while FSIS evaluates whether the intended use of the notified substance in meat or poultry products complies with the FMIA or PPIA or, if not, whether use of the substance would be permitted in products under FSIS jurisdiction under specified conditions or restrictions. In addition, during the interim period responsibility to administer the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) was transferred from the Agricultural Marketing Service of USDA to FSIS (69 FR 1647; January 12, 2004). In light of this transfer of responsibility, FSIS provided its review of the use of a notified substance in egg products when a GRAS notice that CFSAN sent to USDA for its review under the PPIA or the FMIA also described a use in egg products (Ref. 1).

As discussed in the experience document (Ref. 1), more than 25 percent of GRAS notices filed during the interim period included the use of the notified substance in products subject to regulation by FSIS under the FMIA or the PPIA, and FDA obtained FSIS review for these substances.

We are seeking comment on whether to make our coordinated review process with FSIS explicit in the final rule. We also are seeking comment on whether such a procedure should provide that a notifier who submits a GRAS notice for the use of a notified substance in products subject to regulation by FSIS provide an additional paper copy or an electronic copy of the GRAS notice that we could send to FSIS. This would improve the efficiency of a simultaneous review process. We note that FSIS, under statutes it administers, does not review the use of substances intended for use in food for animals and therefore there would be no need for a counterpart provision in proposed § 570.36 for substances intended for use in food for animals.

O. Issue 14. Timeframe for FDA's Evaluation of a GRAS Notice

Section 170.35 does not specify a timeframe for FDA to complete the rulemaking associated with a GRAS affirmation petition. However, we proposed to respond to a GRAS notice within 90 days to reflect both a commitment to operational efficiency and a belief that our evaluation of whether a notice provides a sufficient basis for a conclusion of GRAS status could likely be accomplished in such a period. We also considered whether the timeframe for our response should be longer than 90 days, and specifically requested comment on whether the proposed 90-day timeframe for an Agency response should be lengthened, *e.g.,* to 120 days or 150 days. In addition, we noted that comments on the proposal may justify a longer timeframe for notifications concerning substances used in animal food.

Several comments favored a 90-day timeframe because a 90-day timeframe would provide an incentive for manufacturers to submit GRAS notices. Other comments questioned whether the proposed 90-day timeframe would allow sufficient time for us to adequately evaluate a GRAS notice and urged us to establish a realistic timeframe that we would hold ourselves accountable to.

As shown in the experience document (Ref. 1), during the interim period CFSAN responded to approximately 12 percent of GRAS notices within 90 days, and required more than 180 days to respond to more than 31 percent of GRAS notices. As discussed in the experience document (Ref. 1), the scientific challenges associated with the safety assessment conducted by the notifier were a factor in the time CFSAN needed to respond to a GRAS notice. We request comment on whether we should retain a set timeframe for us to respond to a GRAS notice, and, if so, whether it should be 90 days or another timeframe.

O. Issue 15. Conflict of Interest

In the GAO report (Ref. 2), GAO noted that we have not issued any conflict of interest guidance that companies can use to help ensure that the members of their expert panels are independent. Further, GAO recommended that FDA develop a strategy to minimize the potential for conflicts of interest, including taking steps such as issuing guidance for companies on conflict of interest and requiring information in GRAS notices regarding expert panelists' independence. As discussed in the GAO report (Ref. 2), we consider that the use of an expert panel is one way to demonstrate consensus (*i.e.,* the common knowledge element of safety) and we do not consider the view of an expert panel alone to be determinative for establishing safety. We seek comment on whether companies would find it useful to have guidance on potential conflicts of interest of GRAS expert panelists. If such guidance would be useful, we seek comment on what companies currently do to mitigate such a conflict. We also seek comment on whether to require that GRAS notices include information regarding expert panelists' independence.

P. Issue 16. Additional Guidance on Documenting GRAS Conclusions

The GAO report recommended that FDA issue guidance on how to document GRAS conclusions (Ref. 2). In our response to GAO, we noted the guidance in the preamble to the GRAS proposal and the guidance on our Web site that answers common questions about the food ingredients classified as GRAS in the form of frequently asked questions (Ref. 6). We seek comment whether there is a need to clarify that this guidance also applies to a GRAS conclusion that is not submitted to FDA under the proposed notification procedure and whether there is a need for FDA to develop further guidance on documenting such a GRAS conclusion.

Q. Issue 17. Pending GRAS Affirmation Petitions

In the 1997 proposed rule, we proposed to presumptively convert any filed, GRAS affirmation petition that is pending on the effective date of the rule (hereinafter referred to as a "pending petition") to a GRAS notice. The conversion would take place on the effective date of the final rule. Any person (hereinafter referred to as an "affected petitioner") who had submitted a GRAS affirmation petition could amend the converted petition by submitting the dated and signed document that would be required under proposed § 170.36(c)(1). In essence, we would waive the requirement for an affected petitioner who submitted such a document to agree to provide us with access to applicable data and information upon request if the affected petitioner informed us that the complete record that supports the conclusion of GRAS status had been submitted in the applicable GRAS petition. The proposed procedures for our review and administration of a converted petition would be similar to those for a newly

submitted GRAS notice. However, by 90 days after the effective date of the final rule,[6] we would inform any affected petitioner who had not submitted a certification that the converted petition was inadequate as a notice.

A few comments stated that the 1997 proposed rule did not discuss the fate of a pending petition if the petitioner elected not to submit a conversion amendment. These comments did not understand the implications of the proposed provisions which, in essence, would consider that the affected petitioner had not provided a basis for a conclusion of GRAS status.

Many comments objected to the proposed provisions regarding pending petitions. In general, these comments expressed the opinion that our proposal was fundamentally unfair to an affected petitioner because an affected petitioner had invested considerable time and resources in the petition process. Some comments suggested that we "grandfather" a pending petition (*i.e.,* complete the rulemaking that began under the petition process), as a matter of course, in those circumstances where we had completed our scientific review and had no outstanding scientific questions. Other comments suggested that such a "grandfather" provision be an option available to an affected petitioner rather than a matter of course. One comment recommended that the final rule provide a petitioner with a period of 180, rather than 90, days to submit the dated and signed document providing information in proposed § 170.36(c)(1). This comment argued that many of these petitions had been pending for years, that the subjects of the petitions had been marketed during those years, and that there would therefore be no urgency in closing the applicable files.

In light of the view of the comments that our proposed disposition of pending petitions was unfair, in this document we are seeking comments regarding pending petitions. Specifically, we seek comment on how to reduce the impact on affected petitioners while retaining the principle that we will not devote resources to pending petitions. We seek comment on whether an outcome of "withdrawal without prejudice" instead of "insufficient basis" would be more appropriate when an affected petitioner simply chooses not to have the pending petition considered under the GRAS notification procedure. We are seeking comment on whether an affected petitioner could request that we incorporate by reference a withdrawn GRAS affirmation petition into a GRAS notice, and if so, if any requirements of the GRAS notification procedure should be waived.

We also note that, as discussed in the experience document (Ref. 1), during the interim period we processed a pending petition as a food additive petition and issued a food additive regulation for the petitioned substance (21 CFR 172.780; 70 FR 8032, February 17, 2005). We note that CVM has no pending GRAS petitions and thus, this discussion is not applicable to GRAS affirmation petitions for food for animals.

[6] Proposed § 170.36(g)(3)(iii) stated that we would inform a petitioner who did not submit a conversion amendment that the notice was inadequate within 90 days of publication of the final rule, rather than within 90 days of the effective date of the final rule. This was an error.

III. Costs and Benefits

FDA requests comments on how the issues discussed in this document could affect the costs and benefits estimated in the 1997 proposed rule, *e.g.,* whether these issues would result in costs or benefits that would be either greater than, or less than, those estimated in the 1997 proposed rule (62 FR 18938 at 18958).

IV. Paperwork Reduction Act of 1995

The 1997 proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Interested persons are requested to send comments regarding information collection to FDA (*see* **DATES** and **ADDRESSES**).

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

We have placed the following references on display in the Division of Dockets Management (*see* **ADDRESSES**). You may see them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register.**)

1. Experience With GRAS Notices Under the 1997 Proposed Rule, Memorandum Dated November 4, 2010, from Linda S. Kahl of FDA to Docket No. FDA–1997–N–0020.

2. United States Government Accountability Office, Report to Congressional Requestors on Food Safety: FDA Should Strengthen Its Oversight of Food Ingredients Determined To Be Generally Recognized as Safe (GRAS), Report No. GAO–10–246, February 2010, Accessible at *http://www.gao.gov/new.items/d10246.pdf,* Accessed and printed on May 3, 2010.

3. Memorandum for the Heads of Executive Departments and Agencies, Dated June 1, 1998, Signed by President William J. Clinton, Accessible at *http://www.plainlanguage.gov/whatisPL/govmandates/memo.cfm,* Accessed and printed on July 14, 2008.

4. FDA Form No. 3480, Notification for New Use of a Food Contact Substance, Accessible at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/ucm076880.pdf,* Accessed and printed on October 13, 2010.

5. FDA, 2007, Nanotechnology Task Force Report 2007, Accessible at *http://www.fda.gov/ScienceResearch/SpecialTopics/Nanotechnology/NanotechnologyTaskForceReport2007/default.htm,* Accessed and printed on October 13, 2010.

6. Guidance for Industry: Frequently Asked Questions About GRAS, Accessible at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodIngredientsandPackaging/ucm061846.htm,* Accessed and printed on October 13, 2010.

Dated: December 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–32344 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132554–08]

RIN 1545–BI16

Additional Rules Regarding Hybrid Retirement Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–132554–08) that was published in the **Federal Register** on Tuesday, October 19, 2010 (75 FR 64197) providing guidance relating to certain provisions of the Internal Revenue Code that apply to hybrid defined benefit pension plans.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu, Lauson C. Green, or Linda S. F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 411 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–132554–08) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–132554–08), which was the subject of FR Doc. 2010–25942, is corrected as follows:

§ 1.411(b)(5)–1 [Corrected]

On page 64214, column 3, § 1.411(b)(5)–1(e)(2)(iii)(A), line 19, the language "change the rate of interest crediting" is corrected to read "change the interest crediting rate".

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010–32538 Filed 12–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

Request for Information Regarding Value-Based Insurance Design in Connection With Preventive Care Benefits

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of Consumer Information and Insurance Oversight, Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: This document contains a request for information on how group health plans and health insurance issuers can employ value-based insurance design in the coverage of recommended preventive services.

DATES: Comments are due on or before February 28, 2011.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by VBID, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: E–OHPSCA–VBID.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* VBID.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code HHS–OS–2010–002. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

- *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.
- *By regular mail.* You may mail written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: HHS–OS–2010–002, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

- *By express or overnight mail.* You may send written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: HHS–OS–2010–002, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.
- *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the following address: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: HHS–OS–2010–002, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OCIIO drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of

filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the address indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–120391–10 VBID, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–120391–10 VBID), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–120391–10 VBID), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in Room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Lisa Campbell, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, at (301) 492–4100.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.asp*) and the Office of Consumer Information & Insurance Oversight (OCIIO) Web site (*http://www.hhs.gov/OCIIO*).

SUPPLEMENTARY INFORMATION:

I. Background

Section 1001 of the Patient Protection and Affordable Care Act (the Affordable Care Act) added a new section 2713 to the Public Health Service Act (the PHS Act), relating to preventive care. The Affordable Care Act also added a new section 715(a)(1) to the Employee Retirement Income Security (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) incorporating the provisions of part A of title XXVII of the PHS Act (including PHS Act section 2713) into ERISA and the Code, making section 2713 applicable to group health plans and health insurance coverage in connection with group health plans. The Departments of the Treasury, Labor, and Health and Human Services (the Departments) published interim final regulations implementing the provisions of PHS Act section 2713 on July 19, 2010, at 75 FR 41726.

Section 2713 of the PHS Act and the Departments' implementing regulations apply to group health plans and health insurance issuers offering group or individual health insurance coverage that is not grandfathered.[1] These provisions require such plans and issuers to provide coverage for recommended preventive services, without imposing cost-sharing requirements.[2] The complete list of items and services that are required to be covered under these interim final regulations can be found at *http://www.HealthCare.gov/center/regulations/prevention.html.*

The interim final regulations clarify that, with respect to a plan or health insurance coverage that has a network of providers, a plan or issuer is not required to provide coverage for recommended preventive services delivered by an out-of-network provider. Such a plan or issuer may also impose cost-sharing requirements for recommended preventive services delivered by an out-of-network provider.

The interim final regulations also provide that if a recommendation or guideline for a recommended preventive service does not specify the frequency, method, treatment, or setting for the provision of that service, the plan or issuer may use reasonable medical management techniques to determine any coverage limitations. The use of reasonable medical management techniques allows plans and issuers to adapt these recommendations and guidelines for coverage of specific items and services where cost sharing must be waived. Thus, a plan or issuer may rely on established techniques and the relevant evidence base to determine the frequency, method, treatment, or setting for which a recommended preventive service will be available without cost-sharing requirements to the extent not specified in a recommendation or guideline.

The preamble to the interim final regulations also invited comments on value-based insurance designs (VBID). In general, VBID includes the provision of information and incentives for consumers that promote access to and use of higher value providers, treatments, and services. The preamble stated:

> The Departments recognize the important role that value-based insurance design can play in promoting the use of appropriate preventive services. These interim final regulations, for example, permit plans and issuers to implement designs that seek to foster better quality and efficiency by allowing cost-sharing for recommended preventive services delivered on an out-of-network basis while eliminating cost-sharing for recommended preventive health services delivered on an in-network basis. The Departments are developing additional guidelines regarding the utilization of value-based insurance designs by group health plans and health insurance issuers with respect to preventive benefits. The Departments are seeking comments related to the development of such guidelines for value-based insurance designs that promote consumer choice of providers or services that offer the best value and quality, while ensuring access to critical, evidence-based preventive services.

In response to the solicitation of comments, the Departments received about 25 comment letters regarding VBID. Many commenters cited the importance of using VBID to help control rising health care costs and promote better health care outcomes. A number of other commenters raised

[1] For information on whether a particular group health plan or health insurance coverage is a grandfathered plan, *see* Affordable Care Act section 1251 and the Departments' implementing regulations at 75 FR 34538 (as amended by 75 FR 70114).

[2] In general, the recommended preventive services are: (1) Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (Task Force) with respect to the individual involved; (2) immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved; (3) with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA); and (4) with respect to women, evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the Task Force).

concerns about VBID becoming a barrier to access to services. Some also questioned how value would be assessed and whether that assessment would include measures such as quality and effectiveness, not solely measures of cost.

The Departments remain interested in promoting high-value, clinically effective, evidence-based preventive care. (Outside the context of preventive care, the coverage requirements and cost-sharing prohibition of PHS Act section 2713 are not applicable.) The Departments are issuing the fifth in a series of Affordable Care Act Implementation Frequently Asked Questions (FAQs), which identifies certain health plan design elements that are considered to comply with PHS Act section 2713. To inform future guidance, this RFI solicits additional information on specific examples and best practices of VBID for recommended preventive services, as well as data used to support and inform VBID benefit design, measurement, and evaluation in the context of recommended preventive services.

II. Solicitation of Comments

A. Comments Regarding Regulatory Guidance

This RFI requests comments generally on VBID in the context of recommended preventive services, as well as specifically on the following questions:

1. What specific plan design tools do plans and issuers currently use to incentivize patient behavior, and which tools are perceived as most effective (for example, specific network design features, targeted cost-sharing mechanisms)? How is effective defined?

2. Do these tools apply to all types of benefits for preventive care, or are they targeted towards specific types of conditions (for example, diabetes) or preventive services treatments (for example, colonoscopies, scans)?

3. What considerations do plans and issuers give to what constitutes a high-value or low-value treatment setting, provider, or delivery mechanism? What is the threshold of acceptable value? What factors impact how this threshold varies between services? What data are used? How is quality measured as part of this analysis? What time frame is used for assessing value? Are the data readily available from public sources, or are they internal and/or considered proprietary?

4. What data do plans and issuers use to determine appropriate incentive models and/or amounts in steering patients towards high-value and/or away from low-value mechanisms for delivery of a given recommended preventive service?

5. How often do plans and issuers re-evaluate data and plan design features? What is the process for re-evaluation? Specifically:

a. How is the impact of VBID on patient utilization monitored?

b. How is the impact of VBID on patient out-of-pocket costs monitored?

c. How is the impact of VBID on health plan costs monitored?

d. What factors are considered in evaluating effectiveness (for example, cost, quality, utilization)?

6. Are there particular instances in which a plan or issuer has decided not to adopt or continue a particular VBID method? If so, what factors did they consider in reaching that decision?

7. What are the criteria for adopting VBID for new or additional preventive care benefits or treatments?

8. Do plans or issuers currently implement VBIDs that have different cost-sharing requirements for the same service based on population characteristics (for example, high vs. low risk populations based on evidence)?

9. What would be the data requirements and other administrative costs associated with implementing VBIDs based on population characteristics across a wide range of preventive services?

10. What mechanisms and/or safety valves, if any, do plans and issuers put in place or what data are used to ensure that patients with particular co-morbidities or special circumstances, such as risk factors or the accessibility of services, receive the medically appropriate level of care? For example, to the extent a low-cost alternative treatment is reasonable for some or the majority of patients, what happens to the minority of patients for whom a higher-cost service may be the only medically appropriate one?

11. What other factors, such as ensuring adequate access to preventive services, are considered as part of a plan or issuer's VBID strategy?

12. How are consumers informed about VBID features in their health coverage?

13. How are prescribing physicians/other network providers informed of VBID features and/or encouraged to steer patients to value based services and settings?

14. What consumer protections, if any, need to be in place to ensure adequate access to preventive care without cost sharing, as required under PHS Act section 2713?

B. Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. These costs and benefits are not limited to the Federal government, but pertain to the affected public as a whole. Under Executive Order 12866, a determination must be made whether implementation of this rule will be economically significant. A rule that has an annual effect on the economy of $100 million or more is considered economically significant.

In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the impact on small entities of proposed rules and regulatory alternatives. An analysis under the Regulatory Flexibility Act must generally include, among other things, an estimate of the number of small entities subject to the regulations (for this purpose, plans, employers, and issuers and, in some contexts small governmental entities), the expense of the reporting, recordkeeping, and other compliance requirements (including the expense of using professional expertise), and a description of any significant regulatory alternatives considered that would accomplish the stated objectives of the statute and minimize the impact on small entities. For this purpose, the Departments consider a small entity to be an employee benefit plan with fewer than 100 participants.

The Paperwork Reduction Act (PRA) requires an estimate of how many respondents will be required to comply with any "collection of information" requirements contained in regulations and how much time and cost will be incurred as a result. A collection of information includes recordkeeping, reporting to governmental agencies, and third-party disclosures.

The Departments are requesting comments that may contribute to the analyses that will be performed under these requirements, both generally and with respect to the following specific areas:

1. What costs and benefits are associated with expanded use of VBID methods? How do costs and benefits vary among different types of preventive screenings, lifestyle interventions, medications, immunizations, and diagnostic tests?

2. What policies, procedures, practices and disclosures of group

health plans and health insurance issuers would be impacted by expanded use of VBID methods? What direct or indirect costs and benefits would result? Which stakeholders will be impacted by such benefits and costs?

3. What impact would expanded use of VBID methods have on small employers or small plans? Are there unique costs or benefits for small plans? What special considerations, if any, should the Departments take into account for small employers or small plans?

Signed at Washington, DC on December 20, 2010.

Nancy J. Marks,

Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC on December 21, 2010.

George H. Bostick

Benefits Tax Counsel, Department of the Treasury.

Signed at Washington, DC on December 16, 2010.

Phyllis C. Borzi

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Dated: December 21, 2010.

Jay Angoff

Director, Office of Consumer Information and Insurance Oversight.

[FR Doc. 2010–32612 Filed 12–27–10; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 182

[DOD–2009–OS–0038; RIN 0790–AI54]

Defense Support of Civilian Law Enforcement Agencies

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements 32 CFR part 185 and legislation concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement efforts, including responses to civil disturbances.

DATES: Comments must be received by February 28, 2011.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Tom LaCrosse, 703–697–5822.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 182 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 182 does not contain a Federal mandate that may result in the expenditure by State, local, and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 182 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and assigns responsibilities within DoD for assisting civilian law enforcement agencies, therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 182 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 182 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 182

Armed forces, Law enforcement.

Accordingly, 32 CFR part 182 is proposed to be added to read as follows:

PART 182—DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.

182.1 Purpose.
182.2 Applicability and scope.
182.3 Definitions.
182.4 Policy.
182.5 Responsibilities.
182.6 Procedures.

Authority: Legal authorities include title 10 U.S.C. 113, 331–334, 371–382, 2576, and 2667; title 14 U.S.C. 141; title 16 U.S.C. 23, 78, 593, and 1861; title 18 U.S.C. 112, 351, 831, 1116, 1385, and 1751; title 22 U.S.C. 408, 461–462; title 25 U.S.C. 180; title 31 U.S.C. 1535; title 42 U.S.C. 97, 1989, and 5121–5207 (Stafford Act); title 50 U.S.C. 1621–1622; Public Law 94–524, and Executive Order 12656.

§ 182.1. Purpose.

This part implements 32 CFR part 185 and title 10, United States Code (U.S.C.) 375 concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement efforts, including responses to civil disturbances.

§ 182.2. Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military

Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) Governs all DoD Component planning for and response to civil disturbance operations (CDO) (formerly referred to as "military assistance for civil disturbances").

(c) Applies to the Army National Guard and the Air National Guard (hereafter referred to collectively as the "National Guard") personnel when under Federal command and control. Also applies to National Guard personnel when the Secretary of Defense determines that it is appropriate to employ National Guard personnel in title 32, U.S.C., status to fulfill a request for defense support of civil authorities (DSCA), the Secretary of Defense requests the concurrence of the Governors of the affected States, and those Governors concur in the employment of National Guard personnel in such a status.

(d) Does not apply to:

(1) Counter narcotics operations, DoD Directive 5111.13,[1] and aircraft piracy. Responsibilities of the DoD Components for aircraft piracy and counterdrug operations shall be communicated by the Chairman of the Joint Chiefs of Staff for the Secretary of Defense under authorities other than this part.

(2) Assistance to law enforcement officials in foreign governments.

(3) The U.S. Coast Guard when acting under its Title 14 U.S.C. authorities, except when operating as a service in the Navy, 14 U.S.C. 3.

(4) The Defense Intelligence and Counterintelligence Components when providing assistance in accordance with paragraph 2.6. of Executive Order 12333.

(5) Requests for sensitive support requirements, which are governed by DoDD S–5210.36 [2].

§ 182.3. Definitions.

Civil disturbance. Group acts of violence and disorder prejudicial to public law and order.

Civilian law enforcement official. An officer or employee of a civilian Federal, State, local, and tribal agency, law enforcement agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

Emergency authority. A Federal military commander's authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because (1) such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order or (2) duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions.

Law enforcement agency. Any of a number of agencies (outside the Department of Defense) chartered and empowered to enforce U.S. laws in the following jurisdictions: The United States, a State (or political subdivision) of the United States, a territory (or political subdivision) of the United States, a federally recognized Native American tribe or Alaskan Native Village, or within the borders of a host nation.

§ 182.4. Policy.

It is DoD policy that:

(a) The Department of Defense shall cooperate with civilian law enforcement officials consistent with the needs of national security and military readiness, while recognizing and conforming to the legal limitations of direct DoD involvement in civilian law enforcement activities as prescribed in this part.

(b) Support of civilian law enforcement officials by DoD personnel shall be consistent with the restrictions of title 18 U.S.C. 1385, the Posse Comitatus Act, and title 10 U.S.C. 375; and those authorities provided in title 18 U.S.C. 112, 351, 831, and 1116; and title 10 U.S.C. 382; Federal laws protecting the civil rights and civil liberties of individuals, and other applicable law.

(1) The restrictions in these authorities shall apply to all actions of DoD personnel within and without the territorial boundaries of the United States.

(c) Exceptions to the restrictions on the direct assistance of DoD personnel in executing the law for DoD actions conducted outside the territorial jurisdiction of the United States may be granted only by the Secretary or Deputy Secretary of Defense.

(d) Requests for law enforcement support shall use the criteria in 32 CFR part 185.

§ 182.5. Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies, State and local agencies, and the DoD Components, as appropriate.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) and in accordance with DoD Directive 5111.13, shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and DSCA, including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&ASA) shall:

(1) Act on behalf of the Secretary of Defense in accordance with this part and any supplemental guidance or direction provided by the Secretary. This includes, when authorized by the President, and directed by the Secretary of Defense, tasking the DoD Components to plan for and to commit DoD resources in response to requests from civil authorities for CDO.

(2) Serve as the principal point of contact between the Department of Defense and the Department of Justice for planning and executing CDO.

(3) Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement officials, including CDO and law enforcement support to the District of Columbia and U.S. Territories, as appropriate.

(4) Provide guidance to and oversight of the DoD Components for support of civilian law enforcement authorities, including CDO and law enforcement support of the District of Columbia and U.S. Territories, as appropriate.

(5) Develop policy guidance for support of civilian law enforcement authorities as specified in § 182.5(a), taking into account the requirements of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Under Secretary of Defense for Intelligence (USD(I)) and DoD Intelligence Components, as well as the interests of the Assistant Secretary of Defense for Health Affairs, the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), and the Assistant to the Secretary of Defense for Nuclear and

[1] Available at *http://www.dtic.mil/whs/directives/corres/pdf/511113p.pdf.*

[2] Authorized users may obtain a copy at *http://www.dtic.smil.mil/whs/directives.* Others may send a written request by e-mail to *USDI.Pubs@osd.mil.*

Chemical and Biological Defense Programs.

(6) Assist in the development of policy governing plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support to the District of Columbia and U.S. Territories, as appropriate.

(7) Inform the ASD(RA) and the Chief of the National Guard Bureau (NGB) of all requests for assistance concerning National Guard and Reserve Component personnel and resources in support of civilian law enforcement officials, including CDO and law enforcement support to the District of Columbia and U.S. Territories, as appropriate; coordinate with ASD(RA) and others as appropriate regarding performance of duty pursuant to title 10 U.S.C. 331–334 and 371–382, and title 32 U.S.C. 502(f) and other appropriate authorities.

(8) Coordinate with the Chairman of the Joint Chiefs of Staff in advance any commitment to CDO of DoD forces assigned to the Combatant Commands.

(9) Oversee reimbursement for assistance provided to civilian law enforcement officials, including CDO and law enforcement support of the District of Columbia and U.S. Territories, as appropriate.

(c) The USD(I) shall:

(1) Establish DoD processes and procedures to provide domestic intelligence support to civilian law enforcement officials in accordance with appropriate statutory authorities and DoD and Intelligence Community policy.

(2) Facilitate the coordination of DoD policy governing intelligence support of law enforcement officials, including CDO and law enforcement support to the District of Columbia and U.S. Territories, as appropriate, with Federal departments and agencies, State, local, and tribal agencies, and the DoD Components, as required.

(d) The IG, DoD, shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated pursuant to DoD Directive 5106.01 [3], subject to coordination with the General Counsel of the Department of Defense.

(e) The ASD(RA), under the authority, direction, and control of the USD(P&R), shall assist the ASD(HD&ASA) in the development of guidance for use by approving authorities in evaluating the effect on military readiness of requests for civilian law enforcement assistance directed to units of the Reserve Components and National Guard.

(f) The Heads of the DoD Components shall:

(1) Strictly comply with and disseminate throughout their Components the guidance established by USD(P) pursuant to paragraph (a) of this section.

(2) Dedicate appropriate resources for law enforcement support to carry out the purposes of this part that are consistent with defense policies, goals, and objectives.

(3) Review training and operational programs to determine how and where assistance can best be provided to civilian law enforcement officials consistent with the responsibilities established in this section. This review should include preparation of recommendations regarding activities for which reimbursement could be waived in accordance with § 182.6(e) of this part.

(4) Issue implementing documents in consultation with the Attorney General incorporating the guidelines and procedures in this part, including:

(i) Procedures for prompt transfer of relevant information to law enforcement agencies.

(ii) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, and local civilian law enforcement officials.

(iii) Guidelines for evaluating requests for assistance in terms of impact on national security and military readiness.

(5) Inform the Chairman of the Joint Chiefs of Staff of all requests for support for, and support provided to, civilian law enforcement officials.

(g) The Secretaries of the Military Departments, in addition to the responsibilities in paragraph (f) of this section, shall provide resources to the DoD Components, consistent with defense policies, goals, and objectives, to carry out the purpose of this part.

(h) The Chairman of the Joint Chiefs of Staff, in addition to the responsibilities in paragraph (f) of this section, shall:

(1) Assist the ASD(HD&ASA) in developing CDO policy; in coordination with the ASD(HD&ASA), develop policy guidance for use by approving authorities in evaluating the effect of requests for civilian law enforcement assistance on national security and military readiness.

(2) Provide advice on the effect on national security and military readiness of any request for defense assistance with respect to CDO, at the request of the Secretary of Defense or the DoD Components.

(i) The Combatant Commanders, through the Chairman of the Joint Chiefs of Staff shall, in addition to the responsibilities in paragraph (f) of this section:

(1) Develop operational policies, plans, and procedures, as necessary, to support the provisions of this part.

(2) Implement the provisions of this part in appropriate training and exercises.

(3) When designated as a supported commander, coordinate with supporting DoD components all reimbursement for assistance provided under the provisions of this part.

(j) The Commanders of U.S. Northern Command (USNORTHCOM) and U.S. Pacific Command (USPACOM), through the Chairman of the Joint Chiefs of Staff and in addition to the responsibilities in paragraphs (f) and (i) of this section, shall:

(1) Serve as the DoD planning agents for CDO, following the guidance of the ASD(HD&ASA) and in coordination with the Chairman of the Joint Chiefs of Staff.

(2) Lead the CDO planning activities of the DoD Components in accordance with § 182.6(b)(3)(ii) of this part; serve as the DoD financial managers for CDO operations executed in their areas of responsibility in accordance with § 182.6(e)(2)(ii) of this part.

(k) The Chief, NGB shall:

(1) Assist the ASD(HD&ASA) in the development of policy guidance on civilian law enforcement assistance directed to units of the National Guard in accordance with title 10 U.S.C. chapter 1011.

(2) Assist the ASD(RA) in the development of policy guidance for use by approving authorities in evaluating the effect on military readiness of requests for civilian law enforcement assistance directed to units of the National Guard.

(3) Serve as an advisor to the Combatant Commands on National Guard matters pertaining to Combatant Command missions, and support planning and coordination for such activities as requested by the Chairman of the Joint Chiefs of Staff or the Commanders of the Combatant Commands.

(4) Serve as the channel of communication on all matters pertaining to National Guard homeland defense activities between:

(i) the Secretary of Defense and the Heads of the DoD Components (including the Secretary of the Army and the Secretary of the Air Force), and

(ii) the States.

Direct liaison between the entities in paragraphs (k)(4)(i) and (k)(4)(ii) should

[3] Available at *http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf.*

occur only in an emergency when time does not permit compliance with this part. In each such instance, the Chief, NGB, should be informed of the communication.

§ 182.6. Procedures.

(a) *Restrictions on Participation of DoD Personnel in Civilian Law Enforcement Activities.*

(1) *Guiding Statutory Requirements and Supporting Policies.*

(i) *Posse Comitatus Act.* The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that unless expressly authorized by the Constitution or an act of Congress, whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the law shall be fined or imprisoned for not more than 2 years, or both. In accordance with title 18 U.S.C. 3571, fines may not be more than $250,000.

(ii) *Permissible Direct Assistance.* Activities not restricted by the Posse Comitatus Act are:

(A) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision, known as the Military Purpose Doctrine, must be used with caution, and does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include the following (depending on the nature of the DoD interest and the authority governing the specific action in question):

(*1*) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (chapter 47 of title 10 U.S.C. chapter 47).

(*2*) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding. (See DoD Instruction 5525.07 [4] and the Memorandum of Agreement Between the Attorney General and the Secretary of Defense with respect to matters in which the Department of Defense and the Department of Justice both have an interest.)

(*3*) Investigations and other actions related to a commander's inherent authority to maintain law and order on a DoD installation or facility.

(*4*) Protection of classified defense information or equipment.

(*5*) Protection of DoD personnel, equipment, and official guests, as authorized by statute and in conjunction with civilian authorities that may also have jurisdiction.

(B) Audits and investigations conducted by, under the direction of, or at the request of the IG, DoD, pursuant to section 8(g) of Appendix 3 to title 5, U.S.C., subject to applicable limitations on direct participation in law enforcement activities.

(C) When specifically authorized by the President in accordance with applicable law (*e.g.,* title 10 U.S.C. chapter 15) or permitted under emergency authority (32 CFR part 185), for quelling civil disturbances or performing civilian law enforcement functions (*e.g.,* search, seizure, arrest, and surveillance). When permitted under emergency authority, those DoD officials and commanders responsible for determining appropriate action have the authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(1) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or,

(2) When duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions. Federal action, including the use of DoD forces, is authorized when necessary to protect Federal property or functions (32 CFR part 185).

(D) DoD actions taken pursuant to title 10 U.S.C. 331–334, relating to the use of DoD forces with respect to insurrection, domestic violence, or conspiracy that hinders the execution of State or Federal law in specified circumstances.

(E) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct DoD participation in civilian law enforcement include:

(*1*) Protection of national parks and certain other Federal lands. (See title 16 U.S.C. 23, 78, and 593)

(*2*) Enforcement of the Fishery Conservation and Management Act of 1976, title 16 U.S.C. 1861.

(*3*) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons. (See title 18 U.S.C. 112 and 1116)

(*4*) Assistance in the case of crimes against members of Congress. (See title 18 U.S.C. 351)

(*5*) Assistance in the case of crimes involving nuclear materials. (See title 18 U.S.C. 831)

(*6*) Protection of the President, Vice President, and other designated dignitaries. (See title 18 U.S.C. 1751)

(*7*) Actions taken in support of the neutrality laws. (See title 22 U.S.C. 408 and 461–462)

(*8*) Removal of persons unlawfully present on Indian lands. (See title 25 U.S.C. 180)

(*9*) Execution of quarantine and certain health laws. (See title 42 U.S.C. 97)

(*10*) Execution of certain warrants relating to enforcement of specified civil rights laws. (See title 42 U.S.C. 1989)

(*11*) Removal of unlawful enclosures from public lands. (See title 43 U.S.C. 1065)

(*12*). Protection of rights of a discoverer of an island covered by the Guano Islands Act (See title 48 U.S.C. 1418)

(*13*) Support of territorial governors if a civil disorder occurs. (See title 48 U.S.C. 1422 and 1591)

(*14*) Actions in support of certain customs laws. (See title 50 U.S.C. 220)

(*15*) Support of the Attorney General in emergency situations involving chemical or biological weapons of mass destruction. (See title 10 U.S.C. 382)

(iii) *Restrictions on Direct Assistance.* (A) Except as authorized by law, the Constitution, or this instruction, the prohibition on the use of DoD personnel as a posse comitatus or to otherwise execute the law includes these forms of direct assistance:

(*1*) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(*2*) A search or seizure.

(*3*) An arrest, apprehension, stop and frisk, or similar activity.

(*4*) Evidence collection, security functions, and crowd and traffic control.

(*5*) Surveillance or pursuit of individuals, or acting as undercover agents, informants, investigators, or interrogators.

(B) The use of deputized DoD uniformed personnel by State or local law enforcement authorities shall be in accordance with DoD Instruction 5525.13, Limitation of Authority to Deputize DoD Uniformed Law Enforcement Personnel by State and Local Governments.

(C) The use of deadly force and/or the carrying of firearms by DoD uniformed personnel while engaged in law enforcement or security duties for

[4] Available at *http://www.dtic.mil/whs/directives/corres/pdf/552507p.pdf.*

protecting personnel, protecting vital Government assets, or guarding prisoners shall be in accordance with CJCSI 3121.01B, Standing Rules of Engagement Standing Rules for the Use of Force for U.S. Forces.

(D) Requests for exceptions to policy outside the territorial jurisdiction of the United States when compelling and extraordinary circumstances justify them may only be granted by the Secretary or Deputy Secretary of Defense.

(iv) *Use of DoD Personnel to Operate or Maintain Equipment.* The use of DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment shall be limited to situations when the use of non-DoD personnel for operation or maintenance of such equipment would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military readiness. In general, the head of the civilian law enforcement agency may request a DoD Component to provide personnel to operate or maintain, or to assist in operating or maintaining, equipment for the civilian agency. This assistance shall be subject to this guidance:

(A) Except as otherwise authorized by law, such assistance may not involve DoD personnel in a direct role in a law enforcement operation. (See paragraph (a)(1)(iii) of this section.)

(B) Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

(C) The use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials may be provided only in accordance with DoD 4515.13–R [5].

(D) A request for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment may be made by the head of a civilian agency empowered to enforce these laws:

(*1*) Title 21 U.S.C. 801–904, and 951–971.

(*2*) Title 8, U.S.C. 1324–1328.

(*3*) A law relating to the arrival or departure of merchandise as defined in title 19 U.S.C. 1401, into or out of the customs territory of the United States, as defined in title 19 U.S.C. 1401, or any other territory or possession of the United States.

(*4*) Title 46, U.S.C. chapter 705.

(*5*) Any law, foreign or domestic, prohibiting terrorist activities.

(E) In addition to the assistance authorized under this section:

(*1*) DoD personnel may be assigned to operate or assist in operating equipment:

(*i*) To the extent the equipment is used in a supporting role, and

(*ii*) When the equipment is used for monitoring and communicating to civilian law enforcement officials the movement of air and sea traffic with respect to any criminal violation of the laws specified in paragraph (a)(1)(iv) of this section; or

(*iii*) When the agency providing assistance is authorized to furnish assistance to a State, local, or foreign government that is involved in the enforcement of laws similar to those in paragraph (a)(1)(iv)(D) (title 10 U.S.C. 374(b)).

(*2*) DoD personnel made available to a civilian law enforcement agency pursuant to title 10 U.S.C. 374(b) may operate equipment for:

(*i*) Detection, monitoring, and communication of the movement of air and sea traffic.

(*ii*) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States, not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(*iii*) Aerial reconnaissance (does not include satellite reconnaissance or technical means).

(*iv*) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(*v*) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (a)(1)(iv)(D) of this section and title 10 U.S.C. 374.

(*vi*) Transportation of civilian law enforcement personnel and operation of a base of operations for civilian law enforcement personnel, subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States).

(F) DoD personnel made available to operate equipment for the purposes in paragraph (a)(1)(iv)(E)(*2*)(*iv*) of this section may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.

(G) The Secretary of Defense may make DoD personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in paragraph (a)(1)(iv)(E) of this section, only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

(H) Nothing in this part restricts the authority of DoD personnel to take emergency action to prevent loss of life or wanton destruction of property, or to restore governmental functioning and public order, or provide adequate protection for Federal property or Federal government functions when sudden and unexpected civil disturbances occur, and if duly constituted local authorities are unable to control the situation and circumstances preclude obtaining prior authorization by the President as provided in paragraph (a)(1)(ii)(C) of this section.

(I) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph (a)(1)(ii)(E) of this section, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by policy, including policy of the DoD Components concerned.

(v) *Expert Advice.* The DoD Components may provide expert advice to Federal, State, or local law enforcement officials in accordance with title 10 U.S.C. 373. This does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(vi) *Training.* (A) The DoD Components may provide training to Federal, State, and local civilian law enforcement officials. Such assistance may include training in the operation and maintenance of equipment made available under paragraph (d)(1) of this section. This does not permit large-scale or elaborate training, or advanced DoD training, and does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(B) Training of Federal, State, and local civilian law enforcement officials shall be provided according to this guidance:

[5] Available at *http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf.*

(*1*) Assistance shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military readiness.

(*2*) Assistance may not involve DoD personnel in a direct role in a law enforcement operation, except as otherwise authorized by law.

(*3*) Assistance of DoD personnel shall be provided at a location where there is not a reasonable likelihood of a law enforcement confrontation, except as otherwise authorized by law.

(vii) *Other Permissible Assistance.* These forms of indirect assistance are not restricted by the Posse Comitatus Act (title 18 U.S.C. 1385):

(*1*) Transfer of information acquired in the normal course of DoD operations that may be relevant to a violation of any Federal or State laws.

(*2*) Such other actions, approved in accordance with procedures established by the DoD Components concerned, that do not subject civilians to the use of DoD power that is regulatory, prescriptive, or compulsory.

(2) *Exceptions Based on Status.* The restrictions in paragraph (a) of this section do not apply to these persons:

(i) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(ii) A member of the National Guard when not in title 10, U.S.C., status, including when called into Federal service.

(iii) A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a DoD officer, assistance will not be provided unless it is permitted by paragraph (a)(1)(ii) of this section.

(iv) A member of a Military Service when off duty and in a private capacity. A Service member is acting in a private capacity when he or she responds on his or her own volition to assist law enforcement officials instead of acting under the direction or control of DoD authorities.

(v) A member of the U.S. Coast Guard acting under the established authorities of that Service.

(vi) A member of the Civil Air Patrol when performing non-Air Force-directed missions.

(3) *Exceptions Based on Military Service.* DoD guidance on the Posse Comitatus Act is applicable to the Department of the Navy as a matter of policy with such exceptions as may be provided by the Secretary of the Navy on a case-by-case basis.

(i) Such exceptions shall include requests from the Attorney General for assistance pursuant to title 21 U.S.C. 873(b).

(ii) Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft; a law enforcement search or seizure; or an arrest, apprehension, or other activity that is likely to subject civilians to the use of DoD power that is regulatory, prescriptive, or compulsory.

(4) *Military Readiness.* Assistance may not be provided if such assistance could adversely affect national security or military readiness. The implementing documents issued by the DoD Components shall ensure that approval for the operation of equipment is vested in officials who can assess the effect of such operation on national security and military readiness.

(5) *Approval Authority.* Requests by civilian law enforcement officials for use of DoD personnel in civilian law enforcement functions shall be forwarded to the appropriate approval authority.

(i) The President, through an executive order to the Secretary of Defense, is the approval authority for requests for assistance for CDO and those other operations that include responding with assets with the potential for lethality, except as provided in paragraph (a)(1)(ii) of this section for emergency authorities and in 32 CFR part 185.

(ii) Requests that involve the Defense Intelligence and Counterintelligence Components are subject to approval by the Secretary of Defense and the guidance in DoD Directive 5240.01[6] and DoD 5240.1–R[7].

(iii) Except as provided in paragraph (a)(1)(iii) of this section, the ASD(HD&ASA) may approve the use of DoD personnel:

(A) To provide training or expert advice in accordance with paragraphs (a)(1)(v) and (a)(1)(vi) of this section.

(B) For equipment maintenance in accordance with paragraph (a)(1)(iv) of this section.

(C) To monitor and communicate the movement of air and sea traffic in accordance with paragraph (a)(1)(iv)(E)(*2*) of this section.

(iv) All requests shall be submitted promptly to the ASD(HD&ASA) for action by the Secretary of Defense, as appropriate.

(v) The views of the Chairman of the Joint Chiefs of Staff shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(HD&ASA) or that otherwise involve personnel assigned to a unified or specified command and that may affect military readiness.

(vi) All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that involve Reserve Component personnel or equipment shall be coordinated with the ASD(RA).

(b) *DoD Support of CDO*—(1) *Guiding Statutory Requirements and Supporting Policies.* (i) The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government and the Department of Defense for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population.

(ii) The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in the State and local governments. Supplementary responsibility is vested by statute in specific agencies of the Federal Government other than the Department of Defense. The President has additional powers and responsibilities under the Constitution of the United States to ensure that law and order are maintained.

(iii) Responsibility for the management of the Federal response to civil disturbances rests with the Attorney General of the United States.

(iv) Any employment of DoD forces in support of law enforcement operations shall maintain the primacy of civilian authority. Requests from the Attorney General to the Department of Defense for this support may be provided at the direction of the President in response to an official request by State or Federal authorities.

(v) The employment of DoD forces to control civil disturbances must be authorized by the President through an executive order directing the Secretary of Defense to act in a specified civil jurisdiction under specific circumstances.

(vi) Planning by the DoD Components for CDO shall be compatible with contingency plans for national security emergencies, and with planning for DSCA pursuant to 32 CFR part 185. For example:

[6] Available at *http://www.dtic.mil/whs/directives/corres/pdf/524001p.pdf.*

[7] Available at *http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf.*

(A) Pursuant to Executive Order 12656, it is the policy of the Federal Government to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. The policy directs the heads of the Federal departments and agencies to identify facilities and resources, both Government and private, essential to the national defense and national welfare, and to develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions during any national security emergency. In some circumstances, risks to such facilities and resources may coincide with or constitute civil disturbances.

(B) The Department of Defense will support civil authorities in civil defense, including facilitating the use of the National Guard in each State for response in both peacetime disasters and national security emergencies. In some circumstances, an attack may coincide with or encompass civil disturbances.

(C) Guidelines concerning the use of deputized DoD uniformed personnel by State or local law enforcement authorities is outlined in DoDI 5525.13 [8].

(D) Guidelines concerning the carrying of firearms and/or the use of deadly force by DoD uniformed personnel while engaged in law enforcement or security duties for protecting personnel, protecting vital Government assets, or guarding prisoners is outlined in DoDD 5210.56 [9] and CJCSI 3121.01B.

(2) *DoD Requirements.* (i) Federal military forces shall not be used for CDO unless specifically authorized by the President, except under emergency authorities as provided in title 48 U.S.C. 1422 and 1591and paragraph (a)(1)(ii)(C) of this section.

(ii) DoD forces shall be made available for CDO, consistent with DoD priorities, as coordinated by designated representatives, as directed by the President.

(iii) DoD forces employed in CDO shall remain under Secretary of Defense command and control at all times.

(iv) The pre-positioning of DoD forces for CDO shall not exceed a battalion-sized unit unless a larger force is authorized by the President.

(v) The DoD Components shall not take charge of any function of civil government unless absolutely necessary under conditions of extreme emergency (*e.g.,* situations that require the exercise of emergency authorities as described in 32 CFR part 185 and paragraph (a)(1)(ii)(C) of this section). Any commander who is directed, or undertakes, to control such functions shall strictly limit DoD actions to the emergency needs, and shall facilitate the reestablishment of civil responsibility at the earliest time possible.

(3) *CDO Planning and Execution.* (i) To ensure essential control and sound management of all DoD forces employed in CDO, centralized direction from the Secretary of Defense, through the ASD(HD&ASA), shall guide planning by the DoD Components, whether alone or with civil authorities. Execution of CDO missions shall be decentralized through the DoD planning agents for CDO, or through joint task force commanders, and only when specifically directed by the Secretary of Defense or as described in paragraph (a)(1)(ii) of this section.

(ii) The Commanders of USNORTHCOM and USPACOM, as the DoD planning agents for CDO in accordance with § 182.5(j) of this part, shall lead the CDO planning activities of the DoD Components in these areas:

(A) USNORTHCOM. The 48 contiguous States, Alaska, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(B) USPACOM. Hawaii and the U.S. possessions and territories in the Pacific area.

(iii) CDO plans and readiness measures shall foster efficient employment of Federal equipment controlled by National Guard forces, whether employed under State or Federal authority, as well as resources of the DoD Components.

(iv) For a CDO response: (A) If the President directs the use of DoD forces for CDO, the ASD(HD&ASA) shall obtain direction from the Secretary of Defense for implementation of the President's direction. The Secretary of Defense will communicate his or her approval to the Combatant Commanders through the Chairman of the Joint Chiefs of Staff.

(B) The ASD(HD&ASA) shall provide any request, contingency plan, directive, or order affecting the employment of U.S. special operations forces to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict and Interdependent Capabilities (ASD(SO/LIC&IC), who supervises the employment of those forces on behalf of the Secretary of Defense in accordance with DoDD 5111.10 [10].

(C) Additionally, the ASD(HD&ASA), in coordination with ASD(SO/LIC&IC) for the employment of special operations forces, shall provide overall supervision of the employment of DoD personnel and resources for homeland defense activities for domestic terrorist incidents and other purposes in coordination with the Chairman of the Joint Chiefs of Staff.

(4) *Role of the National Guard.* (i) Army and Air National Guard forces have primary responsibility for providing support to State and local government agencies in civil disturbances.

(ii) DoD forces (including National Guard forces called into Federal service under title 10, U.S.C.) shall support the primary Federal agency to assist State law enforcement authorities to conduct CDO. Federal forces will always remain under the President's authority as Commander in Chief and will maintain a Federal chain of command. Federal forces may conduct CDO in close coordination with State National Guard forces using direct liaison.

(iii) National Guard forces may be ordered to active duty or called into Federal service to ensure unified command and control of all DoD forces for CDO when the President determines that action to be necessary.

(iv) The Chief, NGB, will inform, as appropriate, the responsible Combatant Commander of plans developed by States for contingency use of non-federalized National Guard forces for CDO.

(5) *Cooperation with Civil Agencies.* (i) The Attorney General of the United States receives and coordinates preliminary requests for CDO from other civil agencies pursuant to title 10 U.S.C. 331–334.

(A) Formal requests for CDO must be presented to the President, who will determine the Federal action to be taken.

(B) In the Department of Justice, the Federal Bureau of Investigation may lead the operational response to a civil disturbance incident.

(C) The President will, through the Attorney General, communicate the President's policy guidance to the DoD commander for CDO. In addition, the Attorney General may designate a senior civilian, known as the Senior Civilian Representative of the Attorney General (SCRAG), as his or her representative.

(ii) The ASD(HD&ASA) shall represent the Department of Defense in

[8] Available at *http://www.dtic.mil/whs/directives/corres/pdf/552513p.pdf.*

[9] Available at *http://www.dtic.mil/whs/directives/corres/html/521056.htm.*

[10] Available at: *http://www.dtic.mil/whs/directives/corres/pdf/511110p.pdf.*

coordinating CDO planning and execution with the Department of Justice, and with other Federal and State law enforcement agencies.

(c) *Use of Information Collected During DoD Operations*—(1) *Acquisition and Dissemination.* The DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any law within the jurisdiction of such officials. The DoD Components shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

(i) The assistance provided shall be in accordance with title 10 U.S.C. 371 and other applicable laws.

(ii) The acquisition and dissemination of information under this section shall be in accordance with DoDD 5200.27, DoDD 5240.1, and DoD 5240.1–R.[11]

(iii) The DoD Components shall establish procedures for "routine use" disclosures of such information in accordance with 32 CFR part 310.

(iv) Under guidance established by the DoD Components concerned, the planning and execution of compatible DoD training and operations shall, to the maximum extent practicable, take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training performed for a DoD purpose (title 10, U.S.C. 371).

(v) The needs of civilian law enforcement officials shall, to the maximum extent practicable, be considered when scheduling routine training missions. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens (title 10 U.S.C. 371).

(vi) Local law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with title 10 U.S.C. 371–382 and DoD 4515.13–R.

(vii) Under procedures established by the DoD Components concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under provisions of DoD 5240.1–R shall also be provided to the El Paso Intelligence Center.

(viii) Nothing in this section modifies DoD procedures for dissemination of information for foreign intelligence or counterintelligence purposes.

(ix) The DoD Components are encouraged to participate in the Department of Justice law enforcement coordinating committees situated in each Federal judicial district.

(x) The assistance provided under this section may not include or permit direct participation by a member of a Military Service in the interdiction of a vessel, aircraft, or land vehicle, or in a search or seizure, arrest, or other similar activity, unless the member's participation in such activity is otherwise authorized by law. (See paragraph (a)(1)(ii) of this section)

(2) *Military Readiness.* Information shall not be provided under this section if it could adversely affect national security or military readiness.

(d) *Use of DoD Equipment and Facilities*—(1) *Equipment and Facilities.* The DoD Components may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with the guidance in this section.

(i) ASD(HD&ASA) shall issue guidance to ensure that the assistance provided under this section is in accordance with applicable provisions of title 10 U.S.C. 372, 2576, and 2667; title 31 U.S.C. 1535; the Federal Property and Administrative Services Act of 1949, title 40, U.S.C.; title 41 U.S.C. 5, 251–255, and 257–260; title 44, U.S.C. chapters 21, 25, 29, and 31; and other applicable laws.

(ii) ASD(HD&ASA) guidance shall also ensure compliance with DoDDs 4165.6 [12] and 5410.12,[13] and other guidance that may be issued by the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense.

(2) *Limitations on the Use of Personnel.* The DoD Components shall follow the guidance in paragraph (a)(1)(iv) of this section in considering requests for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment made available in (a)(1)(iv) of this section.

(3) *Military Readiness.* Assistance may not be provided under this section if such assistance could adversely affect national security or military readiness. Each request shall be evaluated using criteria provided in 32 CFR part 185 for determining legality, lethality, risk, cost, appropriateness, and readiness. The implementing documents issued by the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military readiness.

(4) *Approval Authority.* (i) Requests by civilian law enforcement officials for DoD assistance shall be forwarded to the appropriate approval authority under the guidance in this section. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority. Requests will be forwarded and processed according to the urgency of the situation.

(A) Requests for the use of equipment or facilities outside the continental United States, other than for arms, ammunition, combat vehicles, vessels, and aircraft, shall be approved in accordance with procedures established by the applicable DoD Component.

(B) Requests from Federal agencies for purchase of equipment (permanent retention) between Federal agencies that are accompanied by appropriate funding documents may be submitted directly to the DoD Components. Requests for transferring equipment to Federal agencies must be processed pursuant to the Economy Act of 1932, title 31, U.S.C. 1535.

(C) Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded in accordance with paragraph (a)(5) of this section.

(D) For loans pursuant to the Federal Property and Administrative Services Act of 1949, as amended, title 40, U.S.C.; or the Economy Act of 1932, as amended, title 31 U.S.C. 1535, which are limited to agencies of the Federal Government; and for leases pursuant to title 10, U.S.C. 2667, which may be made to entities outside the Federal Government, this guidance applies:

(*1*) Requests for arms, ammunition, combat vehicles, vessels, and aircraft shall be submitted through the ASD (HD&ASA) for approval by the Secretary of Defense.

(*2*) Requests for loan or lease or other use of equipment or facilities are subject to approval by the DoD Components, unless approval by a higher official is required by statute or DoDD applicable to the particular disposition.

(ii) The DoD Components shall issue implementing policy and direction for taking action on requests for loan, lease,

[11] Available at *http://www.dtic.mil/whs/directives/corres/pdf/520027p.pdf.*

[12] Available at *http://www.dtic.mil/whs/directives/corres/pdf/416506p.pdf.*

[13] Available at *http://www.dtic.mil/whs/directives/corres/html/541012.htm.*

or other use of equipment or facilities that are not governed by paragraph (a)(1)(iv) of this section. Such implementing policy and direction shall ensure compliance with applicable statutes and DoDDs requiring specific levels of approval with respect to particular dispositions.

(e) *Funding*—(1) *General.* Reimbursement is required when equipment or services are provided to agencies outside the Department of Defense. The primary sources of reimbursement requirements are the Economy Act, title 31 U.S.C. 1535 for Federal agencies; the Robert T. Stafford Disaster Relief and Emergency Act of 1988, title 42, U.S.C. 5121–5207; and title 10, U.S.C. 377 and 2667, provide guidance regarding Secretary of Defense waivers of reimbursement for support to civilian law enforcement agencies. Other statutes may apply to particular types of assistance or assistance to specific civilian law enforcement entities.

(2) *Procedural Requirements.* (i) Defense support of civilian law enforcement agencies is normally an unprogrammed requirement for the Department of Defense. DoD 7000.14–R,[14] prescribes procedures for financing and reporting costs. DoD Components shall comply with these procedures and shall consider the factors presented in paragraph (e)(1) of this section to determine or recommend whether financing is to be accomplished on a reimbursable or non-reimbursable basis.

(ii) The Commanders of USNORTHCOM and USPACOM shall serve as the financial managers responsible for DoD oversight of all operations executed in their areas of responsibility (§ 182.5(j)(1) of this part).

(iii) The Secretary of Defense may waive reimbursement for DoD support to civilian law enforcement agencies in accordance with title 10 U.S.C. 377, or support provided by National Guard personnel performing duty pursuant to title 32 U.S.C. 502(f) in accordance with title 10, U.S.C. 377 if such support:

(A) Is provided in the normal or incidental course of DoD training or operations; or

(B) Results in a benefit to the element of the Department of Defense or personnel of the National Guard providing the support that is substantially equivalent to what would otherwise be obtained from DoD operations or training.

(3) *Personnel Duty Status.* Funding for State active duty of National Guard personnel is the responsibility of the State involved.

Dated: December 22, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32552 Filed 12–27–10; 8:45 am]

BILLING CODE 5001–06–P

[14] Available at *http://www.defenselink.mil/comptroller/fmr/.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0808; FRL–9243–4]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Sulfur Dioxide SIP Revision for Marathon Petroleum St. Paul Park

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a sulfur dioxide State Implementation Plan revision request for Marathon Petroleum in St. Paul Park, Minnesota. This submittal updates the State Implementation Plan to reflect the installation of new boilers and a sulfur recovery unit and changes to three existing heaters. Overall, this update represents a decrease in sulfur dioxide emissions.

DATES: Comments must be received on or before January 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0808, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, 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: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@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: December 15, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010–32483 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0857; FRL–9243–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture; Flat Wood Paneling; Paper, Film, and Foil Surface Coating Processes; and Revisions to Definitions and an Existing Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision includes amendments to the Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control, and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth'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 more detailed description of the State submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, 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.

DATES: Comments must be received in writing by January 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0857 by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0857, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0857. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105 or the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture; Flat Wood Paneling; Paper, Film, and Foil Surface Coating Processes; and Revisions to Definitions and an Existing Regulation," that is located in the "Rules and Regulations" section of this **Federal Register** publication. 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.

Dated: December 14, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–32489 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 28, 2011.

ADDRESSES: In commenting, please refer to file code OIG–118–N. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov*.

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Congressional and Regulatory Affairs, Department of Health and Human Services, Attention: OIG–118–N, Room 5541, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1343.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Regulatory Officer, Office of Inspector General, (202) 619–1368.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–118–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday from 9:30 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 § 14, the Act, § 1128B(b), 42 U.S.C. 1320a–7b(b), specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities. The OIG safe harbor regulations are found at 42 CFR 1001.

B. OIG Special Fraud Alerts

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing these Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191 § 205, the Act, § 1128D, 42 U.S.C. 1320a–7d, requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of HIPAA, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 29, 2009 (74 FR 68762). As required under section 205, a status report of the public comments received in response to that notice is set forth in an appendix to the *OIG's Semiannual Report to Congress* covering the period April 1, 2010, through September 30, 2010.[1] OIG is not seeking additional public comment on the proposals listed in Appendix D at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified

[1] The OIG Semiannual Report to Congress can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.asp*.

safe harbor regulations and new Special Fraud Alerts beyond those summarized in an appendix to the OIG Semiannual Report referenced above.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

- Access to health care services,
- The quality of services,
- Patient freedom of choice among health care providers,
- Competition among health care providers,
- The cost to Federal health care programs,
- The potential overutilization of the health care services, and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

Dated: December 22, 2010.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2010–32705 Filed 12–27–10; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5

[ET Docket No. 10–237; FCC 10–198]

Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to promote and facilitate wireless innovation to ensure that the promise of dynamic spectrum access technologies can be fully realized and applied across more of the radio spectrum. A dynamic sharing approach would, for example, allow devices to identify and use slices of spectrum that are available in a particular location for a limited time—from as little as few seconds to as much as several days. Specifically, the Commission seeks comment on the variety of ways in which dynamic spectrum access radios and techniques can promote more intensive and efficient use of the radio spectrum, and the potential that these technological innovations have for enabling more effective management of spectrum.

DATES: Comments must be filed on or before February 28, 2011, and reply comments must be filed on or before March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452, e-mail: *Rodney.Small@fcc.gov,* TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–237, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry,* ET Docket No. 10–237, FCC 10–198, adopted and released on November 30, 2010. 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: *http://www.fcc.gov.*

Pursuant to §§ 1.415, 1.419, and 1.430 of the Commission's rules, 47 CFR 1.415, 1.419, and 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- 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 a.m. to 7 p.m. All hand deliveries

must be held together with rubber bands or fasteners. Any envelopes 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: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Notice of Inquiry

1. In the *Notice of Inquiry* (NOI), the Commission explores the current state of development of dynamic spectrum access technologies, including the technical developments that affect the design and operation of dynamic radios. In particular, it examines the development of spectrum sensing and other dynamic spectrum sharing capabilities and techniques. Next it explores ways in which it can help promote the development of these technologies for use on both a licensed and an unlicensed basis. The Commission inquires whether there are additional steps it should take to improve its "Spectrum Dashboard," a Web-based access tool that enables users to determine how spectrum is being used, who holds spectrum licenses around the country, and what spectrum is available in a particular geographic area. In addition, the Commission seeks comment on how spectrum used through secondary market arrangements could employ dynamic spectrum access radios and techniques. It also seeks comment on establishment of dynamic access radio test beds and on spectrum bands that might be suitable for dynamic spectrum access. Finally, the Commission examines whether the database access model applicable to unlicensed Television Band Devices might be deployed in other spectrum bands.

2. As a general matter, dynamic spectrum access radios, as well as the new spectrum management techniques that they can enable, hold great promise to increase productive use of spectrum as the Commission seeks to use the nation's available spectrum resources more intensively and efficiently. With data traffic on mobile wireless networks estimated to grow by a factor of thirty-five between 2009 and 2014, there is a critical need for increased efficiency in use of spectrum, as well as the need for additional spectrum, not only for mobile wireless networks, but also for a wide variety of RF-based applications and services. Ensuring that the Commission can take advantage of these improved efficiencies will be critical as it addresses this spectrum challenge, and can lead to increased spectrum value that spurs additional investment and innovation that can benefit American consumers. The Commission seeks to expand the environment in which these advanced technologies and techniques can be developed and improved, and then can be applied across more radio spectrum. Thus, it seeks information on these dynamic technologies and on what additional steps the Commission can and should take to encourage, promote, and incentivize their development and use in both unlicensed and licensed spectrum.

3. The Commission believes that there are opportunities for use of dynamic spectrum access techniques under both licensed and unlicensed regulatory approaches. Each approach has its benefits and limitations in the context of dynamic spectrum access techniques. It also observes that, as spectrum users seek to make the best and most efficient use of the available spectrum resource, they are increasingly using a combination of unlicensed networks and dedicated licensed networks employing advanced radio devices to meet their spectrum needs. The Commission's objective is to identify how to make the most efficient use of spectrum to help meet the demand for wireless broadband services, as well as many other applications, under both licensed and unlicensed regulatory approaches.

4. Much work is being done to advance dynamic radio technologies, and the Commission believes that this work has already enabled more efficient use of the spectrum resource. However, this work is still in its early stages, and far more efficient spectrum use may be possible in the future. For this to happen, not only must advances continue to be made in the areas of sensing technology, usage algorithms, and cognitive abilities, but regulatory models may need to change. The Commission therefore inquires as to what it can do to best facilitate the use of dynamic radio technology, both from a technical and non-technical perspective.

5. Pursuant to sections 4(i), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, and 303, this Notice of Inquiry *is adopted.*

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–32491 Filed 12–27–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 75, No. 248
Tuesday, December 28, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 22, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Small-Scale Livestock Operations 2011 Study.

OMB Control Number: 0579–NEW.

Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to protect the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock diseases and associated risk factors. As part of an ongoing series of NAHMS studies on the U.S. livestock population, APHIS plans to conduct the Small-Scale Livestock Operations 2011 Study. A small-scale farm is defined by the USDA as a farm with annual sales less than $250,000.

Need and Use of the Information: The study is designed to collect information on operations with total annual sales between $10,000 and $250,000. The study questionnaire will be administered via mail with a telephone follow-up for those who do not respond. The information collected through the Small-Scale Livestock Operations study will be analyzed and organized into descriptive reports. The Small-Scale Livestock Operations study will collect data that will assist APHIS in its ability to support farmers in times of unusual economic distress or disaster, such as a foreign animal disease outbreak. The information collected will provide insight into how these small scale producers can best be served in an animal disease outbreak.

Description of Respondents: Business or other for-profit.

Number of Respondents: 16,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,128.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–32627 Filed 12–27–10; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Buckhorn Exploration Project 2010, Okanogan-Wenatchee National Forest, Okanogan County, Washington

ACTION: Notice of Extension of Scoping Period for Environmental Impact Statement.

Joint Lead Agencies: Forest Service, Department of Agriculture; and Department of Natural Resources, Washington State.

Cooperating Agencies: Bureau of Land Management, Department of the Interior; and Department of Ecology, Washington State.

On November 26, 2010, the Department of Agriculture, Forest Service, in cooperation with the Department of the Interior, Bureau of Land Management (BLM), Washington State Department of Natural Resources (DNR), and Washington Department of Ecology (WADOE), announced the intent to prepare an Environmental Impact Statement (EIS) for a proposal by Echo Bay Exploration, Inc. (Echo Bay) to explore their mineral holdings northeast of Tonasket, Washington (FR 72781, Vol. 75, No. 227).

That notice of intent identified January 3, 2011 as the time by which comments on the scope of the project must be received. That period is now being extended until January 18, 2011. Comments must be received by this new date. For further information, contact Phillip Christy, District Environmental Coordinator, 1 West Winesap, Tonasket, Washington 98855, phone (509) 486–5137, Kelly Courtright, BLM Mining Engineer, 1103 N. Fancher Road, Spokane, WA 99212, phone (509) 536–1218, or Fred Greef, SEPA Coordinator, Washington State Department of Natural Resources, P.O. Box 7015, Olympia, WA 98504–7015, phone (360) 902–1628. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8

a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: December 20, 2010.

Maureen R. Hanson,

Acting Forest Supervisor.

[FR Doc. 2010–32621 Filed 12–27–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Huron-Manistee National Forests, Michigan, Land and Resource Management Plan Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Huron-Manistee National Forests (Forest Service) will prepare a supplemental environmental impact statement (SEIS) to assess the environmental impacts of a Land and Resource Management Plan alternative that would ban firearm hunting and snowmobile use (subject to existing rights) on National Forest System lands within Semiprimitive Nonmotorized Management Areas and would ban firearm hunting (subject to existing rights) in Primitive Area (Nordhouse Dunes Wilderness). This analysis will remedy deficiencies identified by the U.S. Court of Appeals for the Sixth Circuit Court in the original Environmental Impact Statement prepared for the Huron-Manistee Land and Resource Management Plan Revision of 2006. The decision which results may amend the Huron-Manistee National Forests Land and Resource Management Plan. The objectives of the analysis, consistent with existing regulatory direction as identified by the court, are to coordinate recreation planning with the State of Michigan with the aim (to the extent feasible) to reduce duplication in meeting recreation demands, to minimize conflicts between off-road vehicle use and other uses of the Forests, and to identify recreational preferences of user groups and the settings needed to provide quality recreational opportunities.

DATES: Comments concerning the scope of the analysis must be received by February 11, 2011.

ADDRESSES: Send written comments to Lee Evison, Forest Planner, Huron-Manistee National Forests, 1755 S. Mitchell Street, Cadillac, MI, 49601; fax: 231–775–5551. Send electronic comments to: *comments-eastern-huron-manistee@fs.fed.us.* Comments sent via e-mail should contain the subject line: "Forest Plan SEIS".

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, anonymous comments may limit the respondent's ability to participate in subsequent administrative or judicial review.

FOR FURTHER INFORMATION CONTACT: Ken Arbogast, Huron-Manistee National Forests; telephone: 231–775–2421; fax: 231–775–5551. See address above under **ADDRESSES**. Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *http://www.fs.fed.us/r9/hmnf* then click on "Land and Resources Management", then "Forest Land and Resource Management Plan".

Individuals who use telecommunication devices for the deaf (TTY) may call 1–231–775–3183.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

On September 29, 2010, the United States Court of Appeals for the Sixth Circuit issued an opinion in the case of *Meister* v. *U.S. Department of Agriculture, et al.,* No. 09–1712 (September 29, 2010), which found deficiencies in the analysis supporting the revised Land and Resource Management Plan for the Huron-Manistee National Forests. Specifically, the court found that:

1. The Forest Service's estimates of snowmobile and cross-country visitors to the Forests were arbitrary,

2. The Service did not coordinate its recreation planning with the State of Michigan, as required, to reduce duplication in recreation demands with respect to gun hunting and snowmobiling,

3. The Service's reasons for keeping certain trails open to snowmobile use were arbitrary, and

4. The Service violated the National Environmental Policy Act when it failed to consider closing Primitive and Semiprimitive Nonmotorized areas to gun hunting and snowmobile use.

Proposed Action

The Forest Service proposes to remedy the deficiencies identified by the court by supplementing the Environmental Impact Statement for the Forest Land and Resource Management Plan. The supplement will evaluate an alternative that closes Semiprimitive Nonmotorized Management Areas to snowmobile use and firearm hunting (subject to existing rights) and closes Primitive Area (Nordhouse Dunes Wilderness) to firearm hunting (subject to existing rights).

The Forest Service proposes to utilize such studies as: The National Visitor Use Monitoring study (2009); Michigan's Statewide Comprehensive Outdoor Recreation Plan (SCORP 2008–2012); Social and Economic Assessment for the Michigan National Forests (2003); Social and Economic Assessment for Michigan's State Forests (2006); Demographics, Recruitment, and Retention of Michigan Hunters by Brian J. Frawley; Demographics, Recruitment, and Retention of Michigan Hunters: 2005 Update; A Portrait of Hunters and Hunting License Trends in Michigan by the National Shooting Sports Foundation on Behalf of the Michgan Department of Natural Resources; Assessment of Snowmobiling in Michigan by Snowmobilers with Michigan Trail Permits (2009) by Charles Nelson; Opinions of Selected Stakeholders Concerning Semi-primitive Area Designation in the Huron-Manistee National Forests (1994) by Charles Nelson.

Possible Alternatives

No Action Alternative: The Forest Service would continue to implement the 2006 Forest Plan in its current form. Current direction would continue to guide management of the Semiprimitive Nonmotorized Management Areas and Primitive Area (Nordhouse Dunes Wilderness). There would be no changes to the management of these areas.

Modified Closure Alternative: The Forest Service would ban firearm hunting and snowmobile use in some portion of the 13 existing Semiprimitive Nonmotorized Areas and the Primitive Area (Nordhouse Dunes Wildnerness).

Other reasonable alternatives may be developed to respond to issues raised during public participation.

Lead and Cooperating Agencies

The lead agency for this proposal is the U.S. Forest Service. The Forest Service has invited the Michigan Department of Natural Resources and Environment (MDNRE) to become a Cooperating Agency.

Responsible Official for Lead Agency

The Responsible Official for the decision is the Regional Forester of the Eastern Region of the Forest Service.

Nature of Decision to be Made

The Regional Forester will decide whether or not to amend the Land and Resource Management Plan for the Huron-Manistee National Forests, through the closure of some or all of the Semiprimitive Nonmotorized Management Areas to firearm hunting and snowmobile use (subject to existing rights); and the Primitive Area (Nordhouse Dunes Wilderness) to firearm hunting (subject to existing rights).

Preliminary Issues

We expect issues to include effects on game species and wildlife management, effects on vegetation, and changes to the recreational experience for visitors to the Semiprimitive Nonmotorized Management Areas and the Primitive Area (Nordhouse Dunes Wilderness), as well as the possible effects of the project on tourism in the counties affected.

Permits and Licenses Required

The Forest Service is not required to obtain any permits or licenses in order to implement this proposal.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the SEIS. The Forest Service plans to scope for information by contacting persons and organizations interested or potentially affected by the proposed action through mailings, public announcements, and personal contacts. Comments received on this notice will be used to identify the range of actions, alternatives and effects to be considered in the SEIS.

It is important that respondents provide their comments at such times and in such manner that they are useful to the agency's preparation of the SETS. Therefore, comments must be provided prior to the close of the comment period and should clearly articulate the respondent's concerns and contentions. The submission of timely and specific comments can affect a respondent's ability to participate in subsequent administrative appeal or judicial review.

Public meetings will be held to answer questions on our process and to accept written comments. The time and locations are as follows:

- 1/31/11—Hilton Inn Express of Birch Run, 12150 Dixie Hwy., Birch Run, MI, from 4–8 p.m.;
- 1/31/11—Huron Shores Ranger Station, 5761 North Skeel Rd., Oscoda, MI, from 4–7 p.m.;
- 2/01/11—Hilton Garden Inn, 26000 American Drive, Southfield, MI, from 4–8 p.m.;
- 2/01/11—Mio Ranger Station, 107 McKinley Road, Mio, MI, from 4–7 p.m.;
- 2/02/11—Causeway Bay Hotel (Will be Changing to Best Western), 6820 South Cedar, Lansing, MI, from 4–8 p.m.;
- 2/02/11—Days Inn of Manistee, 1462 US 31 South, Manistee, MI, from 4–7 p.m.;
- 2/03/11—Crowne Plaza, 57000 East 28th St., Grand Rapids, MI, from 4–8 p.m.;
- 2/03/11—Plainfield Township Hall, 885 Eighth Street, Baldwin, MI, from 4–7 p.m.

Dated: December 20, 2010.

Barry Paulson,

Forest Supervisor.

[FR Doc. 2010–32420 Filed 12–27–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet in Petersburg, Alaska. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review project proposals and make project funding recommendations.

DATES: The meeting will be held Friday, January 7th from 1 p.m. to 5:30 p.m., and on Saturday, January 8th from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Holy Cross House in Petersburg, Alaska. Written comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 50, Wrangell, AK 99929. Comments may also be sent via e-mail to *csavage@fs.fed.us,* or via facsimile to 907–772–5995.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska, 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Evaluation of project proposals and recommendation of projects for funding. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided beginning at 9 a.m. on January 8th.

Dated: December 20, 2010.

Christopher S. Savage,

District Ranger.

[FR Doc. 2010–32556 Filed 12–27–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

[Docket ID: OIG 909–N]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, HHS.

ACTION: Notice to delete three systems of records.

SUMMARY: The Office of Inspector General (OIG) is deleting from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 27, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

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

2. *Mail or Delivery:* Office of Inspector General, Department of Health and Human Services, Attention: OIG 909–N,

Room 5541, Cohen Building, 330 Independence Avenue, SW., Washington DC 20201.

Instructions: We do not accept comments by facsimile (FAX) transmission. All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comment submissions from members of the public is to make these submissions available for public viewing on *http://www.regulations.gov* after receipt.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Regulatory Officer, (202) 619–1368.

SUPPLEMENTARY INFORMATION: In accordance with Privacy Act requirements, agencies are to publish their amended systems in the **Federal Register** when there is a revision, change, or addition. OIG is proposing to delete the following three systems of records (SORN):

1. SORN 09–90–0078

SYSTEM NAME:

Supplementary Security Income (SSI)/Office of Personnel Management (OPM) Temporary Matching File, HHS/OS/OIG.

PURPOSE:

This system of records was maintained to facilitate the comparison of records to identify those Federal employees who may also be receiving SSI benefits concurrently with their Government salaries.

REASON FOR DELETION:

This system of records was a temporary matching file in effect when the Social Security Administration (SSA) was still part of the Department, and when OIG was tasked with verifying that current employees were not also receiving disability payments. SSA has been a separate agency since 1995 and no system or files currently exist.

2. SORN 09–90–0079

SYSTEM NAME:

Welfare Fraud Detection File, HHS/OS/OIG.

PURPOSE:

This system of records was established to facilitate the development of a fraud detection program for Aid to Families with Dependent Children to identify individuals who receiving welfare illegally through misrepresentation.

REASON FOR DELETION:

This system of records references office locations that have not been valid for over 15 years and predate the creation of the separate Department of Education in 1980.

3. SORN 09–90–0102

SYSTEM NAME:

Federal Personnel/HHS–Funded Benefit and Loan Program Temporary Matching File, HHS/OS/OIG.

PURPOSE:

This system of records was maintained to facilitate the comparison of records to identify those Federal employees, Federal retirees, or their survivors who also received assistance under an HHS or HHS-funded benefit or loan program. These records were used for reviewing eligibility and identifying debts owed under these programs.

REASON FOR DELETION:

This system of records was a temporary matching file for fraud detection investigation several years ago. No current files or records of this type currently exist within OIG.

Accordingly, OIG proposes to delete the following systems of records:

System No.	Title	System Manager
09–90–0078	SSI/POM Temporary Matching File	HHS/OS/OIG
09–90–0079	Welfare Fraud Detection File	HHS/OS/OIG
09–90–0102	Federal Personnel/HHS–Funded Benefit and Loan Program Temporary Matching File.	HHS/OS/OIG

Dated: December 15, 2010.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2010–32527 Filed 12–27–10; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 12/10/2010 THROUGH 12/20/2010

Firm name	Address	Date accepted for investigation	Products
Demmer Investments I, Inc. dba Intrex Aerospace.	1815 Boxelder Street, Louisville, CO 80027.	12/13/2010	The firm manufactures mountings, fittings, and other machined metal components for aerospace applications.
Foam Fair Industries, Inc	PO Box 304, 3 Merion Terrace, Aldan, PA 19018.	12/20/2010	The firm manufactures custom packaging kits, gaskets, seals, sheets, blocks, etc., of all types of foam materials.
Gulf Fish, Inc.	5885 Highway 311, Houma, LA 70360	12/16/2010	The firm peels, sizes, and freezes shrimp for human consumption.
Liberty Safe and Security Products, Inc	1199 West Utah Avenue, Payson, UT 84651.	12/15/2010	The firm manufactures fabricated metal products, specializing in lock sets, drawers, vaults and safes.
Photo Stencil, LLC.	4725 Centennial Boulevard, Colorado Springs, CO 80919.	12/20/2010	The firm manufactures electronic components using chemical etching, laser cutting, and electroforming processes.
Platinum 1934, Inc. dba Princess Linens	6899 Peachtree Industrial Blvd., Suite G, Norcross, GA 30092.	12/16/2010	The firm manufactures children's clothing, generally made of cotton.
Topflight Corporation	277 Commerce Drive, Glen Rock, PA 17327.	12/13/2010	The firm manufactures pressure sensitive labels, shrink sleeves, converted parts, and conductive printing.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 20, 2010.

Bryan Borlik,

Program Director.

[FR Doc. 2010–32530 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty order covering certain non-frozen apple juice concentrate from the People's Republic of China. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China,* 65 FR 35606 (June 5, 2000). This is a new shipper review of Lingbao Xinyuan Fruit Industry Co., Ltd. ("LXFI"). Based upon our analysis of the comments and information received, we made changes to the dumping margin calculation for the final results. The final dumping margin is listed below in the section entitled "Final Results of the Review."

DATES: *Effective Date:* December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3927.

SUPPLEMENTARY INFORMATION:

Case History

On August 5, 2010, the Department issued the preliminary results of the NSR for the period June 1, 2009, through January 20, 2010. *See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review,* 75 FR 47270 (August 5, 2010) ("*Preliminary Results*").

On September 7, 2010, LXFI submitted its case brief. No other party submitted case briefs.

On October 4, 2010, the Department extended the deadline for the final results in the instant review by 60 days. *See Non-Frozen Apple Juice Concentrate from the People's Republic of China: Extension of Time Limit for the Final Results of the New Shipper Antidumping Duty Review,* 75 FR 61127 (October 4, 2010).

On October 19, 2010, the Department, as a result of the recent decision issued by the Court of Appeals for the Federal Circuit's ruling in *Dorbest Limited et al.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010), placed a memorandum on the record regarding its reconsideration of its valuation of the labor wage rate for this review. The Department gave interested parties until November 8, 2010 to comment on the proposed labor wage rate methodology. *See* Memorandum to the File, through James C. Doyle, Director, Alex Villanueva, Program Manager, from Alexis Polovina, Case Analyst, regarding New Shipper Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate from the People's Republic of China: Industry-Specific Wage Rate Selection (October 19, 2010).

On November 5, 2010, LXFI submitted comments on the wage rate methodology. No other party submitted comments.

Scope of the Order

The product covered by the order is certain non-frozen apple juice concentrate. Apple juice concentrate is

defined as all non-frozen concentrated apple juice with a brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of the order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to the order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00 and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case brief by LXFI to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum ("Final I&D Memo"), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this NSR and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 7046, of the main Department of Commerce building. In addition, a copy of the Final I&D Memo can be accessed directly on our Web site at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the Final I&D Memo are identical in content.

Changes Since The Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to the margin calculation for LXFI in the final results. For all changes to the calculations, *see* the Final I&D Memo and company specific analysis memoranda.

Final Results of the Review

The weighted-average dumping margins for the period of review are as follows:

CERTAIN NON-FROZEN APPLE JUICE FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
LXFI	0.00.

Assessment

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer-specific duty assessment rates on a weighted-average basis. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this NSR is above *de minimis.* The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this NSR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this NSR for all shipments of subject merchandise by LXFI, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("Act"): (1) For subject merchandise produced and exported by LXFI, the cash deposit rate will be the rate established in the final results of this NSR; (2) for subject merchandise exported by LXFI but not manufactured by LXFI, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 51.74 percent); and (3) for subject merchandise manufactured by LXFI, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(5).

Dated: December 17, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

Comment 1: Surrogate Values
A. Water
B. Containerization
C. Labor
Comment 2: By-Product Offset

[FR Doc. 2010–32675 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date*: December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely

request to revoke in part the antidumping duty order on Fresh Garlic from the People's Republic of China with respect to one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it must notify the Department within 60 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2,1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register**. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews: In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2011.

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Application.

	Period to be reviewed
Antidumping duty proceedings	
BRAZIL: Polyethylene Terephthalate (Pet) Film A–351–841	11/1/09–10/31/10
Terphane Inc.	
GERMANY: Lightweight Thermal Paper A–428–840	11/1/09–10/31/10
Papierfabrik August Koehler AG.	
Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corp..	
MEXICO: Certain Circular Welded Non-Alloy Steel Pipe A–201–805	11/1/09–10/31/10
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Southland Pipe Nipples Co., Inc.	
Lamina y Placa Comercial, S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
SOUTH KOREA: Certain Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/09–10/31/10
SeAH Steel Corporation.	
Hyundai HYSCO.	
Husteel Co., Ltd.	
Nexteel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Kumkang Industrial Co., Ltd.	
A–JU Besteel Co., Ltd.	
SOUTH KOREA: Diamond Sawblades and Parts Thereof A–580–855	1/23/09–10/31/10
Ehwa Diamond Industrial Co., Ltd.	
Hyosung D&P Co., Ltd.	
Hyosung Diamond Industrial Co., Ltd.	
SH Trading Inc.	
Shinhan Diamond Industrial Co., Ltd.	
Western DiamonTools Inc.	
TAIWAN: Certain Circular Welded Non-Alloy Steel Pipe A–583–814	11/1/09–10/31/10
Far East Machinery Co., Ltd.	
Kao Hsuing Chang Iron & Steel Corp.	
Yieh Phui Enterprise Co. Ltd.	
Chung Hung Steel Corporation (a.k.a. Chung Hung Steel Co., Ltd) A–570–849.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut-to-Length Carbon Steel Plate [3] A–570–849	11/1/09–10/31/10
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot-Rolled Carbon Steel Flat Products [4] A–570–865	11/1/09–10/31/10
Baosteel Group Corporation.	
Shanghai Baosteel International Economic & Trading Co., Ltd.	
Baoshan Iron and Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Diamond Sawblades and Parts Thereof [5] A–570–900	1/23/09–10/31/10
Advanced Technology & Materials Co., Ltd.	
ASHINE Diamond Tools Co., Ltd.	
ATM International Trading Co., Ltd.	
Beijing Gang Yan Diamond Products Co.	
Bosun Tools Group Co., Ltd.	
Bosun Tools Co., Ltd.	
Central Iron and Steel Research Institute Group.	
Chengdu Huifeng Diamond Tools Co., Ltd.	
Cliff International Ltd.	
Danyang Aurui Hardware Products Co., Ltd.	
Danyang Dida Diamond Tools Manufacturing Co., Ltd.	
Danyang Hantronic Import & Export Co., Ltd.	
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Danyang Youhe Tool Manufacturer Co., Ltd.	
Electrolux Construction Products (Xiamen) Co. Ltd.	
Fujian Quanzhou Wanlong Stone Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial & Trading Co., Ltd.	
Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.	
Hebei Jikai Industrial Group Co., Ltd.	
Hebei XMF Tools (Group) Co., Ltd.	
Henan Huanghe Whirlwind Co., Ltd.	
Henan Huanghe Whirlwind International Co., Ltd.	
Hua Da Superabrasive Tools Technology Co., Ltd.	
Huachang Diamond Tools Manufacturing Co., Ltd.	
Huzhou Gu's Import & Export Co., Ltd.	
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	
Jiangsu Fengyu Tools Co., Ltd.	
Jiangyin Likn Industry Co., Ltd.	
Jiangsu Inter-China Group Corporation (previously operated as Zhenjiang Inter-China Import & Export Co., Ltd).	
Jiangsu Youhe Tool Manufacturer Co., Ltd (previously operated as Danyang Youhe Manufacturer Co., Ltd).	
Protech Diamond Tools.	

	Period to be reviewed
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Quanzhou Shuangyang Diamond Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co. Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives Inc.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Deda Industry & Trading Co., Ltd.	
Shanghai Robtol Tool Manufacturing Co., Ltd.	
Shijiazhuang Global New Century Tools Co., Ltd.	
Sichuan Huili Tools Co..	
Task Tools & Abrasives.	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co..	
Wuxi Lianhua Superhard Material Tools Co., Ltd.	
Xiamen ZL Diamond Tools Co., Ltd.	
Yichang HXF Circular Saw Industrial Co Ltd.	
Zhejiang Tea Import & Export Co., Ltd.	
Zhejiang Wanda Import and Export Co. dba Zhejiang Wanda Tools Group Corp.	
Zhejiang Wanli Super-hard Materials Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd aka Wanli Tools Group.	
Zhenjiang Inter-China Import & Export Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic [6] A–570–831	11/1/09–10/31/10
APM Global Logistics (Shanghai) Co., Ltd.	
American Pioneer Shipping.	
Anhui Dongqian Foods Ltd.	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APS Qingdao.	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
CMEC Engineering Machinery Import & Export Co., Ltd.	
Dongying Shunyifa Chemical Co., Ltd.	
Dynalink Systems Logistics (Qingdao) Inc.	
Feicheng Acid Chemicals Co., Ltd.	
Frog World Co., Ltd.	
Golden Bridge International, Inc.	
Hangzhou Guanyu Foods Co., Ltd.	
Hebei Golden Bird Trading Co., Ltd.	
Henan Weite Industrial Co., Ltd.	
Heze Ever-Best International Trade Co., Ltd (f/k/a Shandong Heze International Trade and Developing Company).	
Hongqiao International Logistics Co.	
Intecs Logistics Service Co., Ltd.	
IT Logistics Qingdao Branch.	
Jinan Solar Summit International Co., Ltd.	
Jinan Farmlady Trading Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Jiulong International Trading Co., Ltd.	
Jining Tiankuang Trade Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jining Yifa Garlic Produce Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxiang Chengda Import & Export Co., Ltd.	
Jinxiang County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company and Jinxiang Dongyun Import & Export Co.).	
Jinxiang Fengsheng Import & Export Co., Ltd.	
Jinxiang Hejia Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Meihua Garlic Produce Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Jinxiang Yuanxin Import & Export Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Kingwin Industrial Co., Ltd.	
Laiwu Fukai Foodstuff Co., Ltd.	
Laizhou Xubin Fruits and Vegetables.	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi City Heding District Jiuli Foodstuff Co..	
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	

	Period to be reviewed
Linyi Tianqin Foodstuff Co., Ltd.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Apex Shipping Co., Ltd.	
Qingdao BNP Co., Ltd.	
Qingdao Cherry Leather Garment Co., Ltd.	
Qingdao Chongzhi International Transportation Co., Ltd.	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Sea-Line International Trading Co., Ltd.	
Qingdao Sino-World International Trading Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods, Co., Ltd.	
Qingdao Yuankang International.	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Rizhao Huasai Foodstuff Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Int'l Trading Co., Ltd.	
Shandong CHINA Bridge Imports.	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company.	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Longtai Fruits and Vegetables Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Wonderland Organic Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	
Shanghai Ever Rich Trade Company.	
Shanghai Goldenbridge International Co., Ltd.	
Shanghai Great Harvest International Co., Ltd.	
Shanghai LJ International Trading Co., Ltd.	
Shanghai Yijia International Transportation Co., Ltd.	
Shenzhen Bainong Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
Sunny Import & Export Limited.	
T&S International, LLC.	
Taian Eastsun Foods Co., Ltd.	
Taian Fook Huat Tong Kee Pte. Ltd.	
Taian Solar Summit Food Co., Ltd.	
Tianjin Spiceshi Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
U.S. United Logistics (Ningbo) Inv.	
V.T. Impex (Shandong) Limited.	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang Hongqiao International Logistics Co., Ltd.	
Weifang Jinbao Agricultural Equipment Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
Weihai Textile Group Import & Export Co., Ltd.	
WSSF Corporation (Weifang).	
Xiamen Huamin Import Export Company.	
Xiamen Keep Top Imp. and Exp. Co., Ltd.	
Xinjiang Top Agricultural Products Co., Ltd.	
XuZhou Simple Garlic Industry Co., Ltd.	
Yantai Jinyan Trading Co., Ltd.	
You Shi Li International Trading Co., Ltd.	
Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.	
Zhengzhou Dadi Garlic Industry Co., Ltd.	
Zhengzhou Harmoni Spice Co., Ltd.	
Zhengzhou Huachao Industrial Co., Ltd.	
Zhengzhou Yuanli Trading Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Terephthalate (Pet) Film [7] A–570–924	11/1/09–10/31/10
Fuwei Films (Shandong) Co., Ltd.	
Shaoxing Xiangyu Green Packing Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
Shanghai Xishu Electric Material Co., Ltd.	
Shanghai Uchem Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium in Granular Form [8] A–570–864	11/1/09–10/31/10
China Minmetals Non-ferrous Metals Co., Ltd.	

	Period to be reviewed
UNITED ARAB EMIRATES: Polyethylene Terephthalate (Pet) Film A–520–803 JBF RAK LLC	11/1/09–10/31/10

[3] If the above-named company does not qualify for a separate rate, all other exporters of certain cut-to-length carbon steel plate from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain hot-rolled carbon steel flat products from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of diamond sawblades and parts thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of fresh garlic from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of polyethylene terephthalate film, sheet, and strip from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If the above-named company does not qualify for a separate rate, all other exporters of pure magnesium in granular form from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed in 19 CFR 351.101(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 21, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–32683 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a semiannual new shipper review (NSR) under the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India in response to a request from SRF Limited (SRF). The domestic interested parties for this proceeding are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc. (petitioners).

We preliminarily determine that the U.S. sale of subject merchandise produced and exported by SRF was *bona fide* and not sold below normal value (NV). If these preliminary results are adopted in our final results, the Department intends to instruct United States Customs and Border Protection (CBP) to liquidate entries subject to this review without regard to antidumping duties. Interested parties are invited to comment on these preliminary results. *See* the "Preliminary Results of Review" section of this notice. The final results will be issued 90 days after the date of signature of these preliminary results, unless extended.

DATES: *Effective Date:* December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on PET film from India on July 1, 2002. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 44175 (July 1, 2002). On December 24, 2009, the Department received a timely request from SRF, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(c)(2), to conduct a semiannual new shipper review under the antidumping duty order on PET film from India. The Department found the request for review met all of the requirements for initiation set forth in

19 CFR 351.214(b) and initiated the review on March 2, 2010. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Initiation of Antidumping Duty and Countervailing Duty New Shipper Reviews,* 75 FR 10758 (March 9, 2010) (NSR Initiation).[1]

On April 6, 2010, the Department issued the initial questionnaire to SRF. On May 11, 2010, SRF submitted its section A response. On May 13, 2010, SRF submitted its responses to sections B and C of the questionnaire. On June 16, August 17, and September 15, 2010, the Department issued supplemental questionnaires to SRF and to its U.S. customer. SRF and its U.S. customer (through SRF) submitted responses to the questionnaires on July 14, August 30, and November 19, 2010, respectively.

On August 18, 2010, the Department extended the deadline for the preliminary results to October 22, 2010. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review,* 75 FR 52717 (August 27, 2010). On October 18, 2010, the Department decided to further extend the deadline for the preliminary results to December 16, 2010, and then on December 16, 2010, the Department again extended the deadline to December 21, 2010. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review,* 75 FR 65450 (October 25, 2010); *Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review,* (signed on Thursday, December 16, 2010, and not yet published prior to the signing of the instant notice).

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the new shipper sale at issue. In evaluating whether a sale in a NSR is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (*TTPC*). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005) (*New Donghua*) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum (New Shipper Review of Clipper Manufacturing Ltd.)). In *TTPC,* the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC,* 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC,* 366 F. Supp. 2d at 1263. Finally, in *New Donghua,* the Court of International Trade affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.

Based on the totality of circumstances, we preliminarily find that the sale made by SRF during the POR was a *bona fide* commercial transaction. The facts that led us to this preliminary conclusion include the following: (1) Neither the price nor quantity of the sale were outside normal bounds; (2) neither SRF nor its customer incurred any extraordinary expenses arising from this transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that the sale was not *bona fide.* Since much of the factual information used in our analysis of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision is set forth in the Memorandum to Thomas Gilgunn, Program Manager, from Toni Page, International Trade Analyst, regarding Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited (*Bona Fides Memorandum*), dated concurrently with this notice and on file in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. We will continue to examine the *bona fides* of SRF's sale after the preliminary results.

Period of Review

The period of review (POR) for this NSR is July 1, 2009, through December 31, 2009.

Fair Value Comparisons

To determine whether SRF's sale of subject merchandise from India was made in the United States at less than NV, we compared the export price (EP) to the NV, as described in the "U.S. Price" and "Normal Value" section of this notice in accordance with section 777A(d)(2) of the Act.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of SRF's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(ii)(II) of the Act. Based on this comparison, we determined that SRF's home market was viable during the POR.

Product Comparisons

Pursuant to section 771(16)(A) of the Act, for purposes of determining appropriate product comparisons to the U.S. sales, the Department considers all products, as described in the "Scope of the Order" section of this notice above, that were sold in the comparison market in the ordinary course of trade. In accordance with sections 771(16)(B) and

[1] As stated in the initiation notice, due to the closure of the Federal Government in Washington D.C. between February 5 and February 12, 2010, the Department tolled its deadlines during that period, thereby extending all deadlines in this segment of the proceeding by seven days. Therefore, the deadline for the initiation of this new shipper review was extended by one week, to March 8, 2010. *See NSR Initiation,* 75 FR at 10758.

(C) of the Act, where there are no sales of identical merchandise in the comparison market made in the ordinary course of trade, we compare U.S. sales to sales of the most similar foreign like product based on the characteristics listed in sections B and C of our antidumping questionnaire: Grade, specifications, thickness, dimensions, and surface treatment. We found that SRF had sales of foreign like product that were identical in these respects to the merchandise sold in the United States, and therefore compared the U.S. product with the identical merchandise sold in the comparison market based on the characteristics listed above, in that order of priority.

Date of Sale

Regarding date of sale, 19 CFR 351.401(i) states that the Department will normally use the date of invoice as the date of sale, unless a different date better reflects the date on which the material terms of sale are established. In its initial response, SRF reported invoice date as the date of sale for its home market sales and for its U.S. sale. Moreover, SRF reported that for both markets, it issues the invoice on the same date as it ships the merchandise. In its second supplemental questionnaire response, SRF stated that sometimes negotiations can continue after the invoice has been issued (and the goods have been shipped) for certain home market sales. *See* SRF's November 19, 2010, second supplemental questionnaire response at 9. In these circumstances, SRF does not issue a new invoice, rather it adjusts the invoice price by issuing a credit note. *See Id.* We have analyzed the data on the record and preliminarily determine that the reported invoice dates are the appropriate dates of sale for the U.S. and home market sales under review.

U.S. Price

We used EP methodology for SRF's U.S. sale, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the facts of record. In accordance with sections 772(a) and (c) of the Act, we calculated EP using the delivered duty paid price SRF charged its unaffiliated customer. We made deductions, where applicable, for movement expenses, including, domestic inland freight, U.S. inland freight, domestic brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. Customs duties.

Information about the specific adjustments and our analysis of the adjustments is business proprietary, and is detailed in the "Adjustments" section in the Memorandum to Thomas Gilgunn, Program Manager, from Toni Page, International Trade Analyst, Analysis Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited, dated concurrently with this notice (*Preliminary Analysis Memorandum*).

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the comparison market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. *See* "Level of Trade" section below.

Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act, to the extent practicable, NV is normally the price in the home market that is at the same level of trade (LOT) as the EP. The NV LOT is that of the starting-price sale in the comparison market, or when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from exporter to unaffiliated customer. To determine whether NV sales are at a different LOT than EP sales, we examine stages in the selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different levels of trade in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act and under section 351.410(c) of the Department's regulations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

For the U.S. market, SRF reported only one channel of distribution (from SRF to unaffiliated U.S. trader) for its EP sale while, in the home market, SRF reported four channels (the four channels are: SRF to end user, SRF to dealer, SRF to dealer attached customer, and SRF to warehouse to dealer/dealer-attached customer). *See* section A questionnaire response at Exhibit A–5. SRF provided information about selling functions it performed in its home market for all three of its customer categories (end users, dealers, and dealer-attached customers) across the four channels of distribution. SRF reported that certain selling functions were not performed for all three home market customer categories. For its home market sales, SRF reported that its channel of distribution to dealers and dealer-attached customers were most similar to the channel of distribution to its U.S. sale. *See* section C questionnaire response at C–11 and SRF's Second Supplemental Questionnaire Response at 9.

After analyzing the information on the record with respect to these selling functions, we preliminarily find that there were sufficient differences in the selling functions performed for the different channels of trade to conclude that there is more than one level of trade in the home market. We examined the information reported by SRF with respect to its selling functions, freight functions, technical services/warranty functions, and inventory management functions. We examined the selling functions and the level of intensity at which SRF performs those selling functions in the home market channels of distribution, as described in the company's questionnaire responses. *See* section A questionnaire response at A–20 and Exhibit A–5; *see also* SRF's November 19, 2010, second supplemental questionnaire response at 8–9. Information about the specific selling functions we examined, the intensity at which SRF performed them, and our analysis is business proprietary and is detailed in the "Level of Trade" section in the *Preliminary Analysis Memorandum.* Based on the facts and our analysis of SRF's selling functions performed in the channels of distribution, we preliminarily conclude that SRF's home market sales were made at two distinct levels of trade: Sales directly from SRF to its end user and sales from SRF to its dealers and dealer-attached customers. *See* "Level of Trade" section in the *Preliminary Analysis Memorandum.*

As noted previously, SRF reported that its U.S. sale was made through one distribution channel, to an unaffiliated trader in the United States. For the U.S. market, we also examined the information reported by SRF with respect to the selling functions, the freight functions, and U.S. Customs functions performed by SRF for its sale to the unaffiliated U.S. customer. We examined the selling functions and the

level of intensity at which SRF performs these selling functions as described in its questionnaire responses. *See* section A questionnaire response at A–19 through A–20 and at Exhibit A–5, section C questionnaire response at Exhibit C–1, and SRF's November 19, 2010, second supplemental questionnaire response at 8–9. Information about the specific selling functions we examined, the intensity at which SRF performed those selling functions for its U.S. sale (to the unaffiliated trader) and our analyses is business proprietary. As such, it is detailed in the "Level of Trade" section in the *Preliminary Analysis Memorandum.*

Based on our analysis, we preliminarily find that the U.S. sale is at the same LOT as SRF's home market sales to dealers and dealer-attached customers (LOTH 2). Since we are able to match the U.S. sale to home market sales at a comparable LOT, the Department finds that it is not necessary to make an LOT adjustment. For our complete analysis, *see* "Level of Trade" section in the *Preliminary Analysis Memorandum.*

Calculation of Normal Value

We based NV on the starting prices of SRF's sales to unaffiliated home market customers accounting for billing adjustments where applicable, pursuant to section 773(a)(1)(A) of the Act. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions from normal value for movement expenses (*i.e.,* inland freight, warehousing, and inland insurance) where appropriate. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(e), we made, where appropriate, circumstance-of-sale adjustments for home market and U.S. direct selling expenses including imputed credit expenses. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, because commissions were paid only in the home market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of the indirect selling expenses incurred in the home market on U.S. sales. *See* 19 CFR 351.410(e). In accordance with sections 773(a)(6)(A) and (B) of the Act, we also deducted home market packing costs and added U.S. packing costs. *See Preliminary Analysis Memorandum.*

Currency Conversion

In accordance with section 773A(a) of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See also* 19 CFR 351.415.

Preliminary Results of New Shipper Review

As a result of our review, we preliminarily determine in accordance with 19 CFR 351.214(i)(1) that the following percentage margin exists for SRF for the period July 1, 2009, through December 31, 2009:

Manufacturer/exporter	Margin
SRF Limited	0%

Assessment Rate

Upon completion of the new shipper review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department intends to issue assessment instructions for SRF directly to CBP 15 days after the date of publication of the final results of this new shipper review.

Pursuant to 19 CFR 351.212(b)(1), we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we intend to instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent). *See* 19 CFR 351.106(c)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for subject merchandise that is both produced and exported by SRF will be the rate established in the final results of this new shipper review, except no cash deposit will be required if its weighted-average margin is *de minimis* (*i.e.,* less than 0.5 percent); (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 5.71 percent, the all-others rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

Further, effective upon publication of the final results, we intend to instruct CBP that importers may no longer post a bond or other security in lieu of a cash deposit on imports of PET film from India, manufactured and exported by SRF. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Verification

In accordance with section 782(i)(3) of the Act, the Department intends to conduct a sales verification of SRF's responses following the preliminary results of this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within ten days of the date of public announcement. *See* 19 CFR 351.224(b). Unless notified by the Department, pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the deadline for filing the case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Additionally, parties are requested to provide their case briefs and rebuttal briefs in electronic format (*e.g.,* WordPerfect, Microsoft Word, Adobe Acrobat, *etc.*).

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this

notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any written briefs, within 90 days of signature of these preliminary results, unless the final results are extended. *See* section 751(a)(2)(B)(iv) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, as well as 19 CFR 351.214(i).

Dated: December 21, 2010.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32680 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review under the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India in response to a request from SRF Limited (SRF). The period of review (POR) is January 1, 2009, through December 31, 2009. The domestic interested parties for this proceeding are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc. (petitioners).

We preliminarily determine that the U.S. sale of subject merchandise produced and exported by SRF was *bona fide. See* Bona Fides Analysis section below. We also preliminarily determine that SRF has benefitted from countervailable subsidies provided on the production and export of PET film from India. *See* the "Preliminary Results of Administrative Review" section, below. If the final results remain the same as the preliminary results of this review, we intend to instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this new shipper review. *See* the "Public Comment" section of this notice, below. The final results will be issued 90 days after the date of signature of these preliminary results, unless extended.

DATES: *Effective Date:* December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the CVD order on PET film from India. *See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India,* 67 FR 44179 (July 1, 2002) (*PET Film Order*). On December 24, 2009, the Department received a timely request from SRF, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(c), to conduct a semiannual new shipper review of the CVD duty order on PET film from India. The Department found the request for review met all of the requirements for initiation set forth in 19 CFR 351.214(b) and initiated the new shipper review on March 2, 2010, covering the period January 1, 2009, through December 31, 2009. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Initiation of Antidumping Duty and Countervailing Duty New Shipper Reviews,* 75 FR 10758 (March 9, 2010) (*NSR Initiation*).[1]

The Department issued the initial questionnaires to the Government of India (GOI) and to SRF and to its U.S. customer through SRF on April 6, 2010. On May 27, 2010, the GOI submitted its questionnaire response. SRF and its U.S. customer (through SRF) submitted their questionnaire responses on June 10, 2010. The Department issued its first supplemental questionnaires to the GOI on July 8, 2010, and to SRF and to its U.S. customer (through SRF) on August 10, 2010. On August 10, 2010, the GOI submitted its first supplemental response, and SRF and its U.S. customer submitted submitted their first supplemental responses on September 8, 2010. The Department issued a second supplemental questionnaire to the GOI on August 25, 2010, and the GOI filed its second supplemental response on September 22, 2010.

On August 18, 2010, the Department extended the deadline for the preliminary results of the countervailing duty administrative review from August 29, 2010, to November 22, 2010. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review,* 75 FR 52717 (August 27, 2010). On November 5, 2010, the Department further extended the deadline for the preliminary results to December 14, 2010, and then on December 14, 2010, the Department again extended the deadline to December 21, 2010. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review,* 75 FR 69400 (November 12, 2010); *Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review,* 75 FR 79336 (December 20, 2010).

The Department issued a second supplemental questionnaire to SRF on November 22, 2010 and a second supplemental importer questionnaire on December 1, 2010.[2] SRF's U.S. customer (through SRF) filed its response to the second importer questionnaire on December 6, 2010. SRF's second supplemental response is due after the preliminary results, on December 27, 2010.

[1] As stated in the initiation notice, due to the closure of the Federal Government in Washington D.C. between February 5 and February 12, 2010, the Department tolled its deadlines during that period, thereby extending the deadline for the initiation of this new shipper review by one week, to March 8, 2010. *See NSR Initiation,* 75 FR at 10758.

[2] In contrast to the previous importer questionnaire, the second supplemental importer questionnaire was issued separately from the other questionnaires to SRF.

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the new shipper sale at issue. In evaluating whether or not a sale in an NSR is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (*TTPC*). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005) (*New Donghua*) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum (New Shipper Review of Clipper Manufacturing Ltd.)). In *TTPC,* the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC,* 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC,* 366 F. Supp. 2d at 1263. Finally, in *New Donghua,* the Court of International Trade affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower rate than the producer's usual commercial practice would dictate.

Based on the totality of circumstances, we preliminarily find that the sale made by SRF during the POR was a *bona fide* commercial transaction. The facts that led us to this preliminary conclusion include the following: (1) Neither the price nor quantity were outside normal bounds; (2) neither SRF nor its customer incurred any extraordinary expenses arising from this transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that the sale was not *bona fide.* Since much of the factual information used in our analysis of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision is set forth in the *Memorandum to Thomas Gilgunn, Program Manager, from Toni Page, International Trade Analyst, regarding Bona Fide Nature of the Sale in the Duty New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited* (*Bona Fides Memorandum*), dated concurrently with this notice and on file in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. We will continue to examine the *bona fides* of SRF's sale after the preliminary results.

Period of Review

The period of this countervailing new shipper review covers the period January 1, 2009, through December 31, 2009.

Subsidies Valuation Information

Allocation Period

SRF was not a respondent in the original investigation, nor was the company a respondent in any prior segment of this proceeding. In response to the Department's original questionnaire and its first supplemental questionnaire, SRF proposed a company-specific average useful life (AUL) of 16.49 years for its plant and machinery. In Exhibits 9(a)(i–ii) of its original questionnaire response, SRF provided its depreciation schedule over the past 15 years, and a detailed list of assets for plant and machinery related to the production of subject merchandise, respectively.[3] However, SRF also reported that for its two plants in the Packaging Division, SRF has depreciated its assets using a straight-line methodology over either 8 years or 19 years. We note that SRF has not fully explained why it used different depreciation periods for equipment producing the same merchandise nor how these different periods factored into its depreciation schedule. Based on these concerns, we preliminarily determine that SRF has not rebutted the presumption set forth in 19 CFR 351.524 and that its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of these preliminary results we are using the IRS Tables. We are continuing to gather information on SRF's calculation and will reconsider using SRF's company-specific AUL in the final results.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company would pay on a comparable commercial loan that the company could have obtained in the market. Also, 19 CFR 351.505(a)(3)(i) states that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government provided, short-term loan program, the preference would be to use a company-specific annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee-denominated short-term loan benchmark rate and a U.S. dollar-denominated short-term benchmark rate to determine benefits received under the Pre-Shipment Export Financing program. For further information regarding this program, *see* the "Pre-Shipment and Post-Shipment Export Financing" section below.

In prior reviews of this case, the Department determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment export financing and post-shipment export financing loans than other types of rupee-denominated short-term loans. *See, e.g., Notice of Preliminary Results and Rescission in Part of Countervailing*

[3] SRF Original Response of June 10, 2010 (QR–SRF), at Exhibits 9(a)(i–ii).

Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 70 FR 46483, 46485 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*) unchanged in the final results, *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum (*PET Film Final Results of 2003 Review*). In the *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India,* 66 FR 53389, 53390–91 (October 22, 2001) (*PET Film Preliminary Determination*), unchanged in the final determination, *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India,* 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum (*PET Film Final Determination*), at "Benchmarks for Loans and Discount Rates," the Department determined that, in the absence of IBD loans, cash credit (CC) loans are the next most comparable type of short-term loans to pre-shipment export financing than other types of loans, for rupee-denominated pre-shipment export financing, because, like pre-shipment export financing, CC loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. *See PET Film Preliminary Determination,* unchanged in the *PET Film Final Determination*), at "Benchmarks for Loans and Discount Rates." There is no new information or evidence of changed circumstances which would warrant reconsidering this finding. SRF reported receipt of pre-shipment export financing. However, SRF did not obtain IBD loans during the POR. SRF did take out CC short-term loans during the POR. Therefore, for these preliminary results, we used SRF's weighted average CC loans as the basis for the short-term rupee-denominated benchmarks for all pre-shipment financing.

Further, in prior reviews, the Department determined that U.S. dollar-denominated working capital demand loans (WCDL) are comparable to U.S. dollar-denominated pre-shipment export financing and post-shipment export financing, because these loans and WCDLs are used to finance both inventories and receivables. *See PET Film Preliminary Results of 2003 Review,* 70 FR 46484, unchanged in *PET Film Final Results of 2003 Review,* at "Benchmarks for Loans and Discount Rate." There is no new information or evidence of changed circumstances which would warrant reconsidering this finding.

SRF reported only one U.S. dollar-denominated short-term loan during the POR. However, SRF did not obtain any WCDL during the POR. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), the Department is using a national average dollar-denominated short-term interest rate, as reported in the International Monetary Fund's publication International Financial Statistics (IMF Statistics) for SRF.

SRF received exemptions from import duties and central sales taxes (CST) on the importation of capital equipment under the Export Promotion Capital Goods Scheme (EPCGS) and the Special Economic Zones (SEZ) programs, which we have preliminarily determined to be non-recurring benefits in accordance with 19 CFR 351.524(c).

Pursuant to 19 CFR 351.505(a)(2)(ii) the Department will not consider a loan provided by a government-owned special purpose bank to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. *See PET Film Final Results 2003 Review* at Comment 3. Further, in *PET Film Final Results of 2005 Review,* at "Benchmark Interest Rates and Discount Rates," the Department determined that the Industrial Finance Corporation of India (IFCI) and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review,* 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum (*PET Film Final Results of 2005 Review*). As such, the Department does not use loans from the IDBI, IFCI, or EXIM, if reported by respondents, as a basis for a commercial loan benchmark.

In this review, SRF did not have comparable commercial long-term rupee-denominated loans for all required years; therefore, for those years for which we did not have company-specific information, and where the relevant information was on the record, we relied on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii). When there were no comparable long-term, rupee-denominated loans from commercial banks during either the year under consideration or the preceding year, we used national average long-term interest rates, pursuant to 19 CFR 351.505(a)(3)(ii), from the IMF Statistics. Finally, 19 CFR 351.524(d)(3) directs us regarding the selection of a discount rate for the purposes of allocating non-recurring benefits over time. The regulations provide several options in order of preference. The first among these is the cost of long-term fixed-rate loans of the firm in question, excluding any loans which have been determined to be countervailable, for each year in which non-recurring subsidies have been received.

Denominator

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for respondent's receipt of benefits under each program at issue. As discussed in further detail below, we preliminarily determine that the benefits received by SRF under all but one of the programs found countervailable, were tied to export performance. Therefore, for those programs, except as cited below for pre- and post shipment export financing, we use total export sales, including deemed exports, as the denominator for our calculations. *See* 19 CFR 351.525(b)(2). Because pre-shipment and post-shipment export financing requires that the recipient demonstrate physical exports, we used total export sales net of deemed exports. Further, for the one program that was not tied to export performance, the State and Union Territory Sales Tax Exemption program, we have used SRF's total sales of subject merchandise as the denominator in our calculations.

A. Programs Preliminarily Determined To Be Countervailable

1. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (*i.e.,* purchasing raw materials, warehousing, packing, transportation, *etc.*) for merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they draw as needed. Limits on credit lines

are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days, and may be obtained in Indian rupees and in foreign currencies. In the original investigation, the Department determined that the pre-shipment and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) The provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act to the extent that the interest rates provided under these programs are lower than comparable commercial loan interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. *See PET Film Final Determination* at "Pre-Shipment and Post-Shipment Financing." There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

SRF reported that it did not receive any post-shipment export financing during the POR. However, it did report receiving pre-shipment export financing during the POR. With regard to pre-shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.,* the short-term benchmark). Because pre-shipment loans are tied to a company's total exports rather than exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit by the value of SRF's total exports, net of deemed exports, during the POR. *See* 19 CFR 351.525(b)(2). On this basis, we preliminarily determine the countervailable subsidy from pre-shipment export financing for SRF to be 0.13 percent *ad valorem.*

2. Advance License Program (ALP)

Under the ALP, aka Advance Authorization scheme,[4] exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. During the POR, SRF used advance licenses to import certain materials duty free.

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP during that POR. The Department analyzed the changes introduced by the GOI to the ALP in 2005 and acknowledged that certain improvements to the ALP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of this proceeding, systemic issues continued to exist in the ALP system during the POR. *See PET Film Final Results of 2005 Review,* Issues and Decision Memorandum, at Comment 3; *see also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India,* 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1. In the 2005 review, the Department specifically stated that it continues to find the ALP countervailable because of the systemic deficiencies in the ALP identified in that review, including:

> The GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.

PET Film Final Results of 2005 Review, at Comment 3.

Further, in that same review, the Department found that PET film producers "do not have to keep track of wastage since it is not recoverable for the production of PET film." *Id.* Accordingly, no allowance was made by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported subject merchandise. *See id.* Furthermore, the Department found that, in developing the SIONs for Pet film, the GOI did not tie the relevant production numbers to a producer's accounting system or financial statement. *Id.*

In this review, SRF pointed to the revisions addressed in the above referenced 2005 administrative review of the order, stating that the GOI introduced those measures in order to strengthen the supervision and monitoring of the ALP.[5] Further, in response to the Department's request, SRF submitted "a complete set of documents submitted to the" Directorate General of Foreign Trade (DGFT). The cited documents include copies of SRF's application for redemption and its documentation received from the DGFT and Customs at the time of redemption.[6] This information includes the application for redemption, which contains the import and export data from the ALP license, a back-up detail on imports and exports made by SRF, SRF's Appendix 23 as submitted to the GOI, which lists the total quantity consumed for the exported product, and the total quantity authorized.[7] All of SRF's documents were certified by an accountant. The total values of the GOI redemption document reflect the import and export data SRF reported to the GOI. However, we note that the actual consumption and export data deviate from those specified in the original license.

[4] *See* Government of India Original Response of May 27, 2010 (*QR–GOI*), at 19.

[5] *See* QR–SRF, at 65–66, and Exhibits 31(a)–(c).

[6] *See* SRF's First Supplemental Response of September 8, 2010 (SQR1–SRF), at 32–33 and Exhibits S1–23(a) and (b).

[7] *See* SQR1–SRF, at Exhibit S1–23(a) and (b).

The GOI submitted a "detailed note," which, it states, contains the step-by-step procedures, including management, enforcement and maintenance, involved in the issuance of an ALP and in the discharge of its export obligation.[8] Specifically, in this note, the GOI states that the holder of an advance license is required to produce the relevant Bank Certificate of export and realization, along with a copy of the shipping bill(s) containing the details of the shipment (physical exports) or a copy of the invoice duly signed by the unit receiving the material and their jurisdictional excise authorities (deemed exports) for redemption of the ALP. It further states that, before discharging the bank guarantee against the ALP, the Indian Customs verifies that the details of exports as given in the redemption certificate are in accordance with their records.[9]

The Department requested that the GOI submit a complete set of documentation with respect to SRF's export obligation under the ALP, or any other company's complete set of documentation, but in its response, the GOI deferred to the respondent.[10] Thus, to date the Department has not received from the GOI a complete set of documents, which would include documents from each Indian Government entity involved in the processing of the redemption of an export obligation under the ALP. The GOI has not provided SRF's relevant Bank Certificate(s) of export and realization, along with a copy of the shipping bill(s) containing the details of the shipment (physical exports) or a copy of the invoice duly signed by the unit receiving the material and their jurisdictional excise authorities (deemed exports) for redemption of the ALP. As such, the record does not include supporting documentation that demonstrates that Indian Customs verified that the details of exports as given in the redemption certificate are in accordance with the records maintained by Indian Customs with respect to imports and exports. Further, copies of those specific customs records have also not been submitted by the GOI.

Thus, for the preliminary results, the Department was unable to examine the totality of documents involved in the processing of an Application for Redemption of Advance License, as examined by the DGFT and the Indian customs, to assess the monitoring procedures in place. The Department was unable to determine whether Appendix 23 is indeed effective in tracing the consumption of the quantities of inputs imported duty free to the quantities of subject merchandise exported, in accordance with the 2005 SION for PET film. Therefore, there is insufficient record evidence demonstrating the functionality and accuracy of the GOI's monitoring procedures to ensure that the inputs imported duty free were consumed in the production of subject merchandise exported, in accordance with the newly established PET film SION. Moreover, contrary to the GOI's claim that the present ALP scheme permits for monitoring which inputs listed in the SION are actually consumed in the production of the exported product, the GOI did not address the concerns the Department had in the 2005 review with respect to the formulation and verification of the PET film SION. In particular, the Department verified in *PET Film Final Results 2005 Review* that the GOI did not require the producer to tie the inventory and consumption data to the producer's accounting systems and financial statements in order to verify the accuracy of the producer's data, or to account for waste normally incurred in the production. *See PET Film Final Results 2005 Review,* Issues and Decision Memorandum, at Comment 3. In fact, the GOI states in its response that it considers "that the system need not provide for determination of 'what amounts of inputs have actually been consumed' and whether an excess has been allowed in a particular situation and in a given case, as an exporter is required to provide on annual basis a copy of the consumption register Appendix 23, duly certified by a Chartered Accountant."[11]

Further, the Department determined in the 2005 review that the GOI, in its revisions to the ALP, did not address the Department's concerns that it has no specific procedure in place to monitor that these finished products are ultimately exported. Specifically, the Department determined that Appendix 23 does not differentiate and identify sales as being either physical exports, deemed exports, or sales to intermediate suppliers, nor does it segregate imported inputs from domestically procured ones, nor does it differentiate the exported product produced from these inputs by separately identifying physical exports from deemed exports. In this new shipper review, neither the GOI nor SRF claimed that the laws and procedures underlying the ALP had changed with respect to "deemed exports." The Appendix 23 submitted by SRF does not indicate any changes to the Appendix 23 examined in the 2005 review, and thus still does not address the Department's concern regarding deemed exports.[12] Thus, with respect to physical exports versus deemed exports, the GOI still did not demonstrate that it has a reliable monitoring system in place to determine which inputs, and in which amounts, are consumed in the production of the exported product. *See* 19 CFR 351.519(a)(4).

Because there is no evidence on the record demonstrating that the systemic deficiencies in the ALP system identified above have been resolved, the Department continues to find that the ALP confers a countervailable subsidy because: (1) A financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit. Under this program, during the POR, SRF did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we are treating the benefit provided under the ALP as a recurring benefit.

SRF received various ALP licenses, which it reported separately for the production of subject merchandise and non-subject merchandise.[13] However, because the original license(s) identify Polyester Film only, it cannot be established whether the licenses were issued for subject merchandise only, or

[8] *See* QR–GOI, at 20 and Exhibit 1.

[9] *Id.* 31.

[10] *See* Government of India (GOI) First Supplemental Response of August 10, 2010 (SQR1–GOI), at 18–19 and GOI Second Supplemental Response of September 22, 2010 (SQR2–GOI), at 13.

[11] *See* QR–GOI, at 37.

[12] *See* SQR1–SRF, at Exhibit S1–23(a).

[13] *See* Exhibits 30, QR–SRF, and S1–22(a), SQR1–SRF.

for both subject- and non-subject merchandise, *e.g.,* metalized film. Therefore, we were not able to determine whether the licenses were in fact tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Accordingly, we find that SRF's ALP licenses benefit all of the company's exports.

To calculate the subsidy, we first determined the total value of import duties exempted during the POR for SRF. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act. We then divided the resulting benefit by the total value of export sales. On this basis, we determine the countervailable subsidy provided under the ALP to be 0.59 percent *ad valorem.*

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus an interest penalty.

In the investigation, the Department determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies because the scheme: (1) Provides a financial contribution pursuant to section 771(5)(D); (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to section 771(5A) (A) and (B) of the Act because the program is contingent upon export performance. *See, e.g., PET Film Final Determination* at "EPCGS." Because there is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable, we continue to find that this program is countervailable for these preliminary results.

Since the unpaid duties are a liability contingent on subsequent events, under the EPCGS, the exempted import duties would have to be paid to the GOI if accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future, as a contingent liability interest-free loan pursuant to 19 CFR 351.505(d)(1). *See PET Film Final Determination* at "EPCGS." These contingent-liability loans constitute the first benefit under the EPCGS. The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses, for which companies demonstrate that they have completed their export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring * * *" *See Countervailing Duties; Final Rule,* 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.[14]

SRF reported that it imported capital goods under the EPCGS in the years prior to the POR. SRF received various EPCGS licenses, which it reported were for the production of subject merchandise and non-subject merchandise. Information provided by SRF indicates that some of the licenses were issued for the purchase of capital goods and materials to be used in the production of both subject and non-subject merchandise.[15] Based on the information and documentation submitted by SRF, we cannot determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR § 351.525(b)(5). As such, we find that all of SRF's EPCGS licenses benefit all of the company's exports.

SRF met the export requirements for certain EPCGS licenses prior to December 31, 2009, and the GOI has formally waived the relevant import duties. For most of its licenses, however, SRF has not yet met its export obligation as required under the program. Therefore, although SRF has received a deferral from paying import duties when the capital goods were imported, the final waiver on the obligation to pay the duties has not yet been granted for many of these imports.

To calculate the benefit received from the GOI's formal waiver of import duties on SRF's capital equipment imports where its export obligation was met prior to December 31, 2009, we considered the total amount of duties waived, *i.e.,* the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit and treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived SRF's outstanding import duties. *See PET Film Final Determination* at Comment 5. Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted SRF an import duty waiver. Those waivers with values in excess of 0.5 percent of SRF's total export sales in the year in which the waivers were granted were allocated using the allocation period for non-recurring subsidies to be the AUL prescribed by the Internal Revenue Service (IRS) for renewable physical assets for the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury), in accordance with 19 CFR 351.524(d)(2)(i), while waivers with values less than 0.5 percent of SRF's total export sales were expensed in the year of receipt. *See* "Allocation Period" section, above.

As noted above, import duty reductions or exemptions that SRF received on the imports of capital equipment for which they have not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan. *See* 19 CFR § 351.505(d)(1); and *PET Film Final Determination* and Issues and Decision Memorandum, at "EPCGS"; *see also Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India,*

[14] *See e.g., Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India: Final Results of Countervailing Duty Administrative Review,* 75 FR 6634, (February 10, 2010) and accompanying Issues and Decision Memorandum at Comment 9.

[15] *See* Exhibits 16 and 18(a), QR–SRF.

70 FR 13460 (March 21, 2005) (*Indian PET Resin Final Determination*), and accompanying Issues and Decision Memorandum at "Export Promotion Capital Goods Scheme (EPCGS)."

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been finally waived by the GOI. Accordingly, we find the benefit to be the interest that SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. *See, e.g., PET Film Preliminary Results of 2003 Review,* 70 FR 46483, 46488 (August 10, 2005) (unchanged in the final results, 71 FR 7534).

As stated above, under the EPCGS program, the time period for fulfilling the export requirement expires eight years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.,* the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.,* under the EPCGS program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). As the benchmark interest rate, we used the weighted-average interest rate from all comparable commercial long-term, rupee-denominated loans for the year in which the capital good was imported. *See* "Benchmarks for Loans and Discount Rate" section above for a discussion of the applicable benchmark. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the license was approved and summed these amounts to determine the total benefit for each company.

The benefit received under the EPCGS is the sum of: (1) The benefit attributable to the POR from the formally waived duties for imports of capital equipment for which respondents met export requirements by December 31, 2009, and (2) interest due on the contingent liability loans for imports of capital equipment that have not met export requirements. We then divided the total benefit received by SRF under the EPCGS program by SRF's total exports to determine a countervailable subsidy of 0.04 percent *ad valorem.*

4. Special Economic Zones (SEZs) Formerly Known as Export Process Zones/Export Oriented Units (EPZs/EOUs)

In the original questionnaire, we asked the GOI and SRF whether SRF had received benefits under the EPZs/EOUs program. This program was found not to have been used in the original investigation. *See PET Film Final Determination* at "Programs Determined to be Not Used," and aspects of EOUs were subsequently found countervailable in *Indian PET Resin Final Determination. See Indian PET Resin Final Determination,* at e. to g. In its questionnaire response the GOI stated that this program had been converted into a different program, the SEZ program. In response to the Department's request to explain and describe in detail the conversion of the program into a different program, the GOI responded that the conversion of the EPZs/EOUs to the SEZ program was via the Special Economic Zones Act, 2005, effective February 2006 (SEZ Act). The GOI stated that this was not really a new program but only a renaming of the EPZs/EOUs.[16] This new shipper review is the first review under this order where this program was reported to be used by a respondent. In response to the Department's questionnaire requesting information on EPZs and EOUs, SRF reported that it first received approval to set up an SEZ from the Development Commissioner[17] in August 2003 and commenced production in October 2004.[18] Subsequently, SRF expanded its SEZ unit twice, once in 2007 and then again in 2009.[19]

In response to the Department's original questionnaire, and specifically concerning EPZs and EOUs, the GOI stated that the nature of an SEZ is to provide a long-term and stable policy framework with a minimum of regulatory regime and to provide an expeditious and single window clearance mechanism for all eligible to apply for an SEZ. An SEZ may be established jointly or individually by the Central Government, the State Government or a person, *i.e.,* companies like SRF, to manufacture goods or provide services, or both, as well as to serve as a Free Trade and Warehousing Zone.[20] Companies/persons or Governments that want to set-up an SEZ in an identified area, can submit their proposal to the relevant State Government. To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production. In return, the companies inside the SEZ are eligible to receive various forms of assistance.

Companies in a designated SEZ may receive the following benefits: (1) Duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of central sales tax (CST) thereon; (3) exemption from the services tax for the services consumed within the SEZ;[21] (4) exemption from stamp duty of all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty and cess thereon on the sale or supply to the SEZ unit; (6) income tax exemptions under the Income Tax Exemption Scheme Section 10A;[22] and (7) discounted land in an SEZ.[23]

In this new shipper review, SRF reported that it produced subject and non-subject merchandise in an SEZ unit located in Indore during the POR. Specifically, SRF reported using the SEZ program to obtain: (1) Duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of central sales tax (CST) thereon; (3) exemption from stamp duty of all transactions and transfers of immovable property, or documents related thereto within the SEZ; (4) exemption from electricity duty and cess thereon on the sale or supply to the

[16] *See* SQR1–GOI, at 11–12.

[17] The Central Government of India may appoint any of its officers of a certain rank to the position of Development Commissioner of one or more SEZs.

[18] *See* SQR1–SRF, at Revised Exhibit 9(a)(I).

[19] *See* QR–SRF, at Exhibits 19(a) and (b), and SQR1–SRF, at 26–27.

[20] *See* QR–GOI, at 15 and SQR1–GOI, at 12.

[21] The Department previously determined central excise duty exemptions to be not countervailable. *See Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India,* 70 FR 13460 (March 21, 2005), and accompanying Issues and Decision Memorandum at "Export Oriented Units (EOUs) Programs: Purchase of Material and other Inputs Free of Central Excise Duty."

[22] *See* QR–GOI, at 16 and QR–SRF, at 50–51.

[23] *See* SQR1–SRF, at Exhibits S1–20(a)–20(c).

SEZ unit; (5) income tax exemptions under Income Tax Exemption Scheme Section 10A; and (6) discounted land in an SEZ.

Since eligibility for the SEZ program is contingent upon export performance, we find that the assistance provided under the SEZ program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

a. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material

Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free in exchange for committing to export all of the products it produces, excluding rejects and certain domestic sales. Additionally, such companies have to achieve an NFE calculated cumulatively for a period of five years from the commencement of production.

We preliminarily determine that the duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of duty payments. This SEZ program confers benefits in the amounts of exemptions of customs duties not collected in accordance with section 771(5)(E) of the Act.

With regard to these import duty exemptions provided on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Absent such information, the Department finds that all of the import duty exemptions provided under this category of the SEZ program are countervailable. Based on the information provided by SRF in the form of copies of its "Executed Legal agreement for SEZ Unit" with the GOI, until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties.[24] SRF has not yet met its export requirement under this program and will owe the unpaid duties if the export requirement is not met. Therefore, consistent with 19 CFR 351.505(d)(1), until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties to be an interest-free loan made to SRF at the time of importation. We determine the benefit to be the interest that SRF would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

Pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.,* the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods (*i.e.,* under the SEZ program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the long-term, rupee-denominated benchmark interest rate discussed in the "Benchmarks for Interest Rates and Discount Rates" section above for each year in which capital goods were imported as the benchmark.

We calculated the benefit from these exemptions by multiplying the value of the item imported by the applicable duty rates for customs duty and cess, and multiplied these amounts by the appropriate interest rate. We then summed the results, and divided that total by SRF's exports to determine the countervailable subsidy of 0.44 percent *ad valorem.*

b. Exemption From Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material

Under this program, SRF did not have to pay CST on raw materials, capital goods and other goods, such as packaging materials procured domestically. We preliminarily determine that the exemption from payment of CST on purchases of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of CST payments. This SEZ program confers benefits in the amount of exemptions of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically purchased materials is the amount of CST due and uncollected on those purchases by SRF during the POR.

Normally, uncollected indirect taxes, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital goods. As such, pursuant to 19 CFR 351.524(c)(2)(iii), we would normally treat such uncollected taxes due on purchases of capital goods as non-recurring benefits. However, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) and found that the amount of uncollected CST that was tied to the purchase of capital goods during the POR was less than 0.5 percent of total export sales during the POR. We also performed the "0.5 percent test on SRF's uncollected CST on its purchases of capital goods in 2008, 2007, 2006, 2005 and 2004, and found that each year's uncollected CST was less than 0.5 percent of total export sales for each year. Therefore, each annual benefit for 2004–2008 was expensed in the year earned and the only benefit attributable to the POR was the amount of the uncollected CST on purchases of capital goods under this program during the POR. *See* 19 CFR 351.524(b)(2).

With regard to the CST exemptions on goods, such as raw materials, that may be consumed in the production of the exported product, the GOI did not provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.518. Absent such information, the Department finds that all of the CST exemptions provided under this category of the SEZ program are countervailable. Therefore, we are treating all other CST exemptions on all purchases (other than capital goods) as recurring benefits pursuant to 19 CFR 351.524.

To calculate the benefit, we summed the total value of uncollected CST for capital goods purchased during the POR and the total value of uncollected CST due on all other purchases during the POR. We then divided this amount by the total value of SRF's export sales during the POR. On this basis, we preliminarily determine the countervailable subsidy provided to SRF through the CST exemptions under the SEZ program to be 0.53 percent *ad valorem.*

c. Exemption From Stamp Duty of all Transactions and Transfers of Immovable Property, or Documents Related Thereto Within the SEZ

According to SRF, "{t}he Indian Stamp Act, 1899, is a Central enactment and States have powers to adopt the Indian Stamp Act, 1899, with amendments to the same to suit the transactions peculiar to each State," and that the state of Madhya Pradesh has made amendments and imposed various types of Stamp duty. These amendments include the Stamp Duty, Surcharge on

[24] *See* QR–SRF, at 58 and Exhibit 21(a); *see also id.* Exhibit 20(c).

Stamp Duty (under Madhya Pradesh Upkar Adhiniyam), Gram Panchyat Taxes (under Madhya Pradesh Panchayat Raj Adhiniyam, 1993), and Municipalities tax (under Madhya Pradesh Municipalities Act, 1961). Further, SRF states that under Section 13(2) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the transfers of immoveable property or documents related thereto within the SEZ shall be exempt from stamp duty, and that SRF has been exempted from payment of stamp duty on its land lease deed.[25]

In response to the Department's request to explain how the GOI monitors the exemption from stamp duty, the GOI responded that the monitoring criterion is that the documents on which stamp duty is being exempted should relate to the transfer of immovable property within the SEZ. In addition, the GOI provided an exhibit containing the applicable rates of stamp duty.[26]

For these preliminary results, we determine that the program provides a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. We also determine that the SEZ exemption from stamp duty/taxes provides a recurring benefit under 19 CFR 351.524(c).

To calculate the benefit, we first calculated the value of the uncollected stamp duties and taxes, as listed above, which SRF did not pay during the POR, by multiplying the value of the immovable property based on the tax rates provided. We then divided this amount by SRF's total export sales during the POR to calculate a countervailable subsidy of 0.01 percent *ad valorem.*

d. Exemption From Electricity Duty and Cess Thereon on the Sale or Supply to the SEZ Unit

SRF reports that under Section 11(4) of The Indore Special Economic Zone (Special Provisions) Act, 2003, the supply of electricity to an SEZ is exempt from electricity duty and cess.[27] In response to the Department's request to explain its monitoring procedure, the GOI cited to Section 11(4) of The Indore Special Economic Zone (Special Provisions) Act, 2003, stating that the unit to which electricity duty is exempted should be located within the Special Economic Zone as approved by the GOI. In addition, the GOI provided an exhibit including the Madhya Pradesh Electricity Duty (Amendment) Act, 1995 and the Madhya Pradesh Ordinance No. 18 of 200, *i.e.,* the State's laws governing the taxation of electricity.[28]

For these preliminary results, we determine that the electricity duty and cess exemptions provide a financial contribution in the form of revenue foregone by the State Government of Madhya Pradesh pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. We also determine that the SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).

To calculate the benefit, we first calculated uncollected electricity duty and cess which SRF did not pay during the POR, by multiplying the monthly billed amount of electricity consumed by the tax rates provided. We then divided this amount by SRF's total export sales during the POR to calculate a countervailable subsidy of 0.18 percent *ad valorem.*

e. SEZ Income Tax Exemption Scheme (Section 10A)

SRF reported that, in accordance with Section 10A of the Indian Income Tax Act, 1961, it was allowed to deduct its profits derived from the export sales as an SEZ, as defined in the Foreign Trade Policy (FTP), from its taxable income during the POR. Specifically, Section 10A states that:

> Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee.[29]

In its first supplemental response, the GOI also provided a copy of the "Special provision in respect of newly established undertakings in free trade zones, *etc.;* 10A."[30]

According to SRF, a company located in an SEZ does not have to file a formal application to make this deduction under the program, and the plant started production on or after April 2001.[31] According to the GOI, "no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2011 and subsequent years."[32]

Based on the information above, we preliminarily determine that, pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by SRF, pursuant to section 771(5)(E) of the Act. To determine the benefit, we calculated the amount of income tax SRF would have had to pay on the income tax return filed in the POR less the amount SRF actually paid during the POR. *See* 19 CFR 351.509(c). We then divided this benefit by SRF's total export sales during the POR, to determine a countervailable subsidy of 1.29 percent *ad valorem.*

f. Discounted Land Fees in an SEZ

The Indore SEZ where SRF has its plant is located in the State of Madhya Pradesh and as such, the relevant State SEZ Act of Madhya Pradesh State, *i.e.,* the Indore Special Economic Zone (Special Provisions) Act, 2003, applies,[33] and the State Government of Madhya Pradesh is in control of SRF's land lease agreement within the SEZ. SRF reported that, because its SEZ unit is a Mega Project by virtue of its large investment, totaling more than 25 crores (250,000,000 rupees), the State Government of Madhya Pradesh has allowed a concession of 75 percent of the lease premium on the land.[34] This is confirmed by the directive of the Government of Madhya Pradesh, Department of Commerce, Industry and Employment Ministry, submitted by SRF.[35] Information placed on the record by SRF confirms that SRF obtained a discount of 75 percent on the annual all inclusive lease premium.[36]

Based on the information above, we preliminarily determine that, pursuant to section 771(5)(D)(ii) of the Act, the State Government of the State of Madhya Pradesh provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the actual land premium that would be payable absent this program and the actual amount

[25] *See* QR–SRF, at p. 57 and Exhibit 26(b) and SQR1–SRF, at 29–30.

[26] *See* SQR1–GOI, at p. 16 and Exhibit 6.

[27] *See* QR–SRF, at p. 58 and Exhibits 27(a) and (b).

[28] *See* SQR1–GOI, at 16 and Exhibit S1–7.

[29] *See* QR–SRF, at Exhibit 33(a).

[30] *See* SQR1–GOI, at Exhibit S1–7.

[31] *See* QR–SRF, at p. 77.

[32] *See* QR–GOI, at 26.

[33] *See* QR–SRF, at 50.

[34] *See* SQR1–SRF, at 25.

[35] *See id.* at 25 and Exhibits S1–20(a), (b)(English translation of the Madhya Pradesh Directive in Supplement to SQR1–SRF of September 8, 2010, and (c).

[36] *See* Exhibit S1–20(a), at 3 and Exhibit S1–20(c).

paid by SRF, net of advances, *i.e.,*down payments on the lease made by SRF, pursuant to section 771(5)(E) of the Act. We also determine that the discount of the land premium in an SEZ scheme provides a recurring benefit under 19 CFR 351.524(c), because the premium is paid annually. We took the discount on the lease, as reported by SRF to be the benefit and divided this benefit by SRF's total export sales during the POR, to determine a countervailable subsidy of 0.35 percent *ad valorem.*[37]

5. Union Territories Sales Tax Exemption

This program allows sellers located in a Union Territory not to collect CST on their sales outside the Union Territory. In the 2005 administrative review the Department determined this program to be countervailable. The Department found that this program provides a financial contribution in the form of revenue foregone by the respective State governments pursuant to section 771(5)(D)(ii) of the Act, and confer a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(A) and (D)(iv) of the Act, these programs are specific because they are limited to certain geographical regions within the respective States or territories administering the programs. *See Polyethylene Terephthalate Film Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review,* 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum at "Union Territories Central Sales Tax (CST) Program."

In this new shipper review, the GOI reported that SRF did not participate in either of these programs, and stated that it obtained such information from SRF.[38] SRF reported that it did not receive any benefits under the Union Territory CST program or the State Sales Tax Incentive Schemes. However, SRF did report purchases for which the supplier did not collect sales taxes.[39] SRF states that it was not charged sales tax "because of a sales tax exemption applied for and availed of by the seller," and that SRF is not "required to keep track of the program under which the seller has not charged sales tax, * * *"[40] We preliminarily determine that the uncollected CST on SRF's purchases provides a recurring benefit under 19 CFR 351.510(c) and 19 CFR 351.524(c).

To calculate the benefit, we first calculated the total CST exemption SRF received during the POR by multiplying the purchase value by the applicable tax rate to determine the amount that would have been paid on SRF's purchases during the POR absent this program. We then divided this amount by SRF's total sales during the POR to calculate a countervailable subsidy of 0.01 percent *ad valorem.*

B. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that SRF did not apply for or receive benefits during the POR under the programs listed below:

GOI Programs

1. *Duty Free Replenishment Certificate (DFRC) (GOI*).
2. *Target Plus Scheme (GOI*).
3. *Capital Subsidy (GOI*).
4. *Exemption of Export Credit From Interest Taxes (GOI*).
5. *Loan Guarantees From the GOI.*
6. *Duty Entitlement Passbook Scheme (DEPS/DEPB*).

State Programs

7. *State Sales Tax Incentive Schemes.*
8. *Octroi Refund Scheme State of Maharashtra (SOM*).
9. *Waiving of Interest on Loans by SICOM Limited (SOM*).
10. *State of Uttar Pradesh (SUP) Capital Incentive Scheme.*
11. *Infrastructure Assistance Schemes (State of Gujarat*).
12. *Capital Incentive Scheme Uttaranchel.*
13. *Capital Incentive Schemes (SOM*).
14. *Electricity Duty Exemption Scheme (SOM*).

Preliminary Results of New Shipper Review

In accordance with section 751(a)(2)(B)(i) of the Act and 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for SRF for the POR. We preliminarily determine the total countervailable subsidy to be 3.57 percent *ad valorem* for SRF.

Assessment Rates/Cash Deposits

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department intends to instruct CBP to liquidate shipments of subject merchandise produced and exported by SRF entered or withdrawn from warehouse, for consumption from January 1, 2009, through December 31, 2009, at 3.57 percent *ad valorem* of the entered value.

The Department intends to also instruct CBP to collect cash deposits of estimated countervailing duties at the rate of 3.57 percent *ad valorem* of the entered value on shipments of the subject merchandise produced and exported by SRF, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We intend to instruct CBP to continue to collect cash deposits for non-reviewed companies at the applicable company-specific CVD rate for the most recent period or all-others rate established in the investigation. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Further, effective upon publication of the final results, we intend to instruct CBP that importers may no longer post a bond or other security in lieu of a cash deposit on imports of PET film from India, manufactured and exported by SRF. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Verification

As provided in section 782(i)(3) of the Act, the Department intends to conduct verification of the GOI and SRF questionnaire responses following the issuance of the preliminary results.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within ten days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are

[37] *See* SQR1–SRF, at Exhibit S1–20(c).

[38] *See* QR–GOI, at 24 and SQR1–GOI, at 25 and 26.

[39] *See* QR–SRF, at 69 and Exibit 32.

[40] *id. See* QR–SRF, at 71–72.

requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any written briefs, not later than 90 days after the date of signature of this notice, pursuant to section 751(a)(2)(B)(iv) of the Act.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 21, 2010.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32677 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA041

Endangered and Threatened Species; Recovery Plan for the Sperm Whale

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; recovery plan for the sperm whale.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) Recovery Plan for the Sperm whale (*Physeter macrocephalus*). The Recovery Plan contains revisions and additions in consideration of public comments received on the proposed draft Recovery Plan for the sperm whale.

ADDRESSES: Additional information about the Recovery Plan may be obtained by writing to Monica DeAngelis, National Marine Fisheries Service, Southwest Regional Office, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 or send an electronic message to *Monica.DeAngelis@noaa.gov.*

Electronic copies of the Recovery Plan and a summary of NMFS' response to public comments on the Recovery Plan are available online at the NMFS Office of Protected Resources Web site: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/spermwhale.htm.*

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis (562) 980–3232, e-mail *Monica.DeAngelis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) Objective, measurable criteria that, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species. NMFS' goal is to restore endangered sperm whale (*Physeter macrocephalus*) populations to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA.

The sperm whale was listed as an endangered species under the ESA on December 2, 1970 (35 FR 18319). Sperm whales have a global distribution and can be found in the Atlantic, Pacific, and Indian Oceans. They were subject to commercial whaling for more than two and a half centuries and in all parts of the world. The long history of whaling and the complex social structure and reproductive behavior of sperm whales have confounded assessments of population status and structure. Historical catch records are sparse or nonexistent in some areas of the world and over long periods of time, and gross under-reporting or mis-reporting of modern catch data has taken place on a large scale. The wide-ranging, generally offshore distribution of sperm whales and their long submergence times, complicate efforts to estimate abundance. Although the aggregate abundance worldwide is probably at least several hundred thousand individuals, the extent of depletion and degree of recovery of populations are uncertain. Currently, the population structure of sperm whales has not been adequately defined. Most models have assigned arbitrary boundaries, often based on patterns of historic whaling activity and catch reports, rather than on biological evidence. Populations are often divided on an ocean basin level. Therefore, the Recovery Plan is organized, for convenience, by ocean basin and discussed in three sections: Those sperm whales in the Atlantic Ocean/Mediterranean Sea, including the Caribbean Sea and Gulf of Mexico, those in the Pacific Ocean and its adjoining seas and gulfs, and those in the Indian Ocean. There is a need for an improved understanding of the genetic differences among and between populations, in order to determine distinct population units. Although there is new information, existing knowledge of population structure for this nearly continually distributed species remains poor. New information is currently insufficient to identify units that are both discrete and significant to the survival of the species.

NMFS released the draft Recovery Plan and requested comments from the public on July 6, 2006 (71 FR 38385). A summary of comments and NMFS responses to comments are available electronically (*see* **ADDRESSES**). Concurrent with the public comment period, NMFS requested comments from three independent peer-reviewers. The peer-review comment period was extended for another 60 days after the public comment period was closed to allow peer-reviewers more time.

The final Recovery Plan contains: (1) A comprehensive review of sperm whale ecology, (2) a threats assessment, (3) biological and recovery criteria for downlisting and delisting, (4) actions necessary for the recovery of the species, (5) an implementation schedule, and (6) estimates of time and cost to recovery.

The Recovery Plan presents a recovery strategy to address the potential threats based on the best available science and presents guidance for use by agencies and interested parties to assist in the recovery of the sperm whale. The threats assessment ranked threats as either having a/an Unknown, Unknown but Potentially Low, Low, Medium, or High relative impact to the recovery of sperm whales. Ranking assignments were determined by an expert panel with contributions from reviewers. Following are the threat rankings relative to the recovery of the sperm whale:

- Fishery interactions in the Indian Ocean, anthropogenic noise from ship noise, oil and gas exploration, military sonar and explosives, contaminants and pollutants, and loss of prey base due to climate and ecosystem change were ranked as having an unknown impact.

• Ship strikes was ranked as having an unknown but potentially low impact.

• Fishery interactions in the Atlantic Ocean/Mediterranean Sea and Pacific Ocean disturbance from whale watching and other vessels, disease, injury from marine debris, disturbance due to research, predation and natural mortality, direct harvest, competition for resources, and cable laying were ranked as having a low impact; and

No threats were identified as having a medium or high impact relative to the recovery of the fin whale.

The Recovery Plan identifies nine measures that need to be taken to ensure the recovery of sperm whales in the Atlantic Ocean/Mediterranean Sea, Pacific Ocean, and Indian Ocean. The key features of the proposed recovery program for the sperm whale are to: (1) Coordinate State, Federal, and international actions to implement recovery efforts; (2) develop and apply methods to estimate population size and monitor trends in abundance; (3) determine population discreteness and stock structure; (4) conduct risk analyses; (5) identify, characterize, protect, and monitor habitat essential to sperm whale populations; (6) investigate causes of and reduce the frequency and severity of human-caused injury and mortality; (7) determine and minimize any detrimental effects of anthropogenic noise in the oceans; (8) maximize efforts to acquire scientific information from dead, stranded, and entangled sperm whales; and (9) develop a post-delisting monitoring plan.

Criteria for the reclassification of the sperm whale are included in the final Recovery Plan. In summary, the sperm whale may be reclassified from endangered to threatened when all of the following have been met: (1) Given current and projected threats and environmental conditions, the sperm whale population in each ocean basin in which it occurs (Atlantic Ocean/Mediterranean Sea, Pacific Ocean, and Indian Ocean) satisfies the risk analysis standard for threatened status (has no more than a 1 percent chance of extinction in 100 years) *and* the global population has at least 1,500 mature, reproductive individuals (consisting of at least 250 mature females and at least 250 mature males in each ocean basin). Mature is defined as the number of individuals known, estimated, or inferred to be capable of reproduction. Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before downlisting takes place; and (2) None of the known threats to sperm whales are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed: (A) The present or threatened destruction, modification or curtailment of a species' habitat or range; (B) overutilization for commercial, recreational or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors. The population will be considered for delisting if all of the following can be met: (1) Given current and projected threats and environmental conditions, the total sperm whale population in each ocean basin in which it occurs (Atlantic Ocean/Mediterranean Sea, Pacific Ocean, and Indian Ocean) satisfies the risk analysis standard for unlisted status (has less than a 10 percent probability of becoming endangered (has more than a 1 percent chance of extinction in 100 years) in 20 years). Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before delisting takes place; and (2) None of the known threats to sperm whales are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed.

Time and cost for recovery actions are contained in the Recovery Plan. The recovery program for the sperm whale will cost $2.4 million dollars for the first 5 fiscal years and $173.9 million dollars to full recovery, assuming 15 years for recovery starting in 2011 for the Atlantic Ocean/Mediterranean Sea and Pacific Ocean regions and 25 years for the Indian Ocean.

In accordance with the 2003 Peer Review Policy as stated in Appendix R of the Interim Endangered and Threatened Species Recovery Planning Guidance, NMFS solicited independent peer-review on the draft Recovery Plan concurrent with the public comment period. Independent peer-reviews were requested from three scientists and managers with expertise in recovery planning, statistical analyses, fisheries, and marine mammals. Many of the recommendations that were made by the reviewers were addressed and provided in detail in the final Recovery Plan. New information, research results, and references that have become available since the draft Recovery Plan was released were also incorporated into the final Recovery Plan.

Conclusion

NMFS revised the final Recovery Plan for the sperm whale and evaluated all comments received by the public as well as independent peer-reviewers. NMFS concludes that the Recovery Plan meets the requirements of the ESA.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 21, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32692 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA114

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Ad Hoc Reef Fish Limited Access Privilege Program Advisory Panel.

DATES: The meeting will convene at 9 a.m. on Tuesday, January 25, 2011, and conclude by 4 p.m.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Ad Hoc Reef Fish Limited Access Privilege Program Advisory Panel will meet to discuss individual fishing quota financing under the Fisheries Finance Program, NOAA's catch share policy, and, issues related to the design, adoption, implementation, and, evaluation of limited access programs for the commercial and/or recreational sectors.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 22, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–32626 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA112

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Marianas Archipelago Plan Team (PT), Guam Regional Ecosystem Advisory Committee (Guam REAC), Mariana Archipelago Advisory Panel (AP) and Commonwealth of the Northern Mariana Islands Regional Ecosystem Advisory Committee (CNMI REAC).

DATES: The PT meeting will be held on January 19–20, 2011, Guam REAC on January 21, 2011, AP on January 22, 2011 and CNMI REAC on January 24, 2011. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The PT, Guam REAC and AP meetings will be held at the Guam Hilton and Resort, 202 Hilton Road, Tumon Bay, Guam. The CNMI REAC will be held at the Saipan World Resort, P.O. Box 500066, Saipan, MP.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for PT meeting:

9 a.m.–4 p.m. Wednesday and Thursday, January 19–20, 2011

The Marianas PT will meet to hear reports on, discuss and consider developing recommendations on the following items:

A. Status of Fishery Monitoring Programs and Research Projects
B. Update on Marianas Recommendations from the 2009 Fishery Data Workshop
C. Marianas Archipelago Fishery Ecosystem Plan draft annual report.
D. Proposals for improving fishery data collection for stock assessments
E. Council meeting actions
  1. CNMI bottomfish regulatory changes to allow spear fishing of bottomfish management unit species
  2. Federal annual catch limit scoping
F. Other business

Schedule and Agenda for Guam REAC meeting:

9 a.m.–5 p.m. Friday, January 21, 2011

The Guam REAC will meet to hear reports on, discuss and consider developing recommendations on the following items:

A. Report on previous REAC recommendations and actions
B. Coastal Marine Spatial Planning
C. Overview of traditional access and spatial planning
D. Panel presentations and discussion on traditional access and history of change
E. Guest presentation on Shoreline access restrictions in relation to fishermen deaths
F. Panel presentations and discussion on Maintaining access to marine resources
G. Local initiatives and actions
  1. Military efforts to mitigate marine spatial closure impacts on the fishing community
  2. Guam Fisheries Act
  3. Indigenous Fishing Rights
  4. Guam MCP
H. Other business

Schedule and Agenda for Marianas AP meeting:

9 a.m.–5 p.m. Saturday, January 22, 2011

The Marianas AP will meet to hear reports on, discuss and consider developing recommendations on the following items:

A. Coastal Marine Spatial Planning
  1. Shoreline access restrictions in relation to fishermen deaths
  2. Military build-up impacts to Marianas fishing community
  3. Review of Kahoolawe Transition
  4. Report on REAC outcomes
B. Ecosystem monitoring and community issues
  1. Mariana programs and projects
  2. Federal programs and projects
C. Local legislative activities
D. Upcoming meetings and conferences
  1. Marianas archipelago lunar calendar workshop
  2. Offshore aquaculture workshop
  3. Mariana islands green sea turtle workshop
E. Fisheries Development
  1. Guam Marine Conservation Plan
  2. CNMI Marine Conservation Plan
F. Other business

Schedule and Agenda for CNMI REAC meeting:

9 a.m.–5 p.m. Monday, January 24, 2011

The CNMI REAC will meet to hear reports on, discuss and consider developing recommendations on the following items:

A. Status of 2010 REAC Recommendations
B. Coastal Marine Spatial Planning Initiative
  1. Regional Ocean Partnership
  2. Monument Activities and Status
  3. Military build-up impacts to Marianas fishing community
C. Ecosystem monitoring and community issues
  1. CNMI bio-sampling program
  2. Impact of land-based pollution in fish from Saipan Lagoon
  3. Saipan Lagoon net fishing data analysis
  4. Annual catch limit scoping
D. Community Development
  1. Status of Mariana longline fishery
  2. CNMI Marine Conservation Plan
E. Upcoming meeting/conferences/ workshops
  1. Mariana Archipelago Lunar Calendar Workshop
  2. Offshore Aquaculture Workshop
  3. Mariana Islands Green Sea Turtle Workshop
F. Other business

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: December 22, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–32595 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2010–0090]

Coding of Design Marks in Registrations

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The United States Patent and Trademark Office ("USPTO") proposes to discontinue its secondary design coding, the practice of coding newly registered trademarks in its searchable electronic database with design mark codes based on the old paper search designations.

DATES: Comments must be received by January 27, 2011 to ensure consideration.

Addresses for Comments: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments may also be submitted by mail to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand-delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov* and will also be available at the Trademark Legal Policy Office, Madison East, Fourth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 35 U.S.C. 41(i)(1)–(2), the USPTO maintains a publicly available searchable collection of all United States trademark registrations. Initially, the collection was provided in paper form only. Currently, the USPTO provides the collection in electronic form.

When the trademark collection was maintained in paper form, marks were searched in tall cabinets located at the USPTO's Public Search Facility. In addition to the public, trademark examiners searched using the paper collection to determine whether registration should be refused pursuant to 15 U.S.C. 1052(d). Design marks were separated into design categories, groups, types, or divisions, subdivided into specific representations according to the U.S. class of goods or services covered in the registrations, and then arranged in ascending order by registration number. Marks with multiple design elements generally had to be searched separately, which was both challenging and time-consuming.

In an effort to improve the efficiency of searching for the public and USPTO examiners, the USPTO began developing a searchable electronic database of marks in 1982. By 1988, the USPTO's trademark examining attorneys used the automated system exclusively to conduct their searches. The USPTO also began to provide public access to the trademark database of active registered and pending marks through the Public Search Facility and later on the USPTO Web site.

When developing the new automated search system, the USPTO also developed a new numerical design code system, modeled after the International Classification of the Figurative Elements of Marks ("USPTO Design Classification"), which was intended for an electronic environment and would enable searching multiple design elements in one search. In this system, each design element is generally assigned a six-digit numerical code: the first two digits indicate the category type (*e.g.,* category 01 is celestial bodies, natural phenomena, and geographical maps), the next two digits indicate the division (*e.g.,* 07 is globes), and the last two digits indicate the section (*e.g.,* section 05 is globes held by a human). This numerical design code system is more robust than the paper search design code system, which relies exclusively on a word or term to identify a design element and cannot achieve the level of detail of the numerical system.

In conjunction with the new design code system, the USPTO also provided (and continues to provide) a Design Search Code Manual ("Manual") that includes an index, provides guidance on and examples, cross-references related material, and gives tips on searching using this system. The Manual is available to the public on the USPTO Web site.

In 2002, the USPTO submitted a report to Congress detailing a plan for the removal of a portion of its paper search collection. However, in response to public concern about relying exclusively on the electronic system, the USPTO decided to temporarily retain the paper collection of registrations with design coding, while improving the accuracy of its electronic database, and modified its plan accordingly.

In 2007, the USPTO submitted a new report to Congress with updated information about the improved accuracy of its electronic database and USPTO Design Classification coding, microfilmed all paper trademark registrations that include design elements, and removed the entire paper search collection from its search facility. At the same time, the USPTO replicated in the automated search system the paper design code system, exhibiting these word-based codes in a new data field for the electronic search system called the Trademark Search Facility Classification Code Index ("TC Index"). The TC Index allowed those who wished to search using the old paper designations to continue to do so in the electronic database.

Proposed Changes

After more than three years of coding under both the TC Index and USPTO Design Classification systems, the USPTO proposes to discontinue applying the TC Index code system to

registrations because it is no longer cost-effective and is never used by USPTO examining attorneys and rarely used by the public.

Currently, the assignment of TC Index codes to active U.S. trademark registrations in the searchable electronic database costs approximately $531,000 per fiscal year for staffing and systems maintenance and support costs. Terminating the dual design-coding system will result in cost savings and will free the staff to perform more valuable services for the public.

Searches based on the TC Index coding appear to be quite minimal. For example, Trademark Electronic Search System ("TESS") searches conducted from January 1, 2010 though July 31, 2010, show that of the on-average 2,531,680 searches conducted per month, on average only 229 employed the TC Index coding to search. By contrast, 2,805 searches, on average, relied on the USPTO Design Classification. Thus, the vast majority of design searches are currently performed using the USPTO Design Classification system. USPTO examining attorneys also rely exclusively on the USPTO Design Classification system to search.

Compared with the USPTO Design Classification coding system, the TC Index coding system provides little or no benefit to users that would justify the cost to maintain it. The very general categories of designs result in cumbersome and time-consuming searches, generating sometimes enormous results lists for users to review. For example, the TC Index coding system groups stars under the design code SHAPES–ASTRO, which encompasses all astronomical shapes consisting of celestial bodies (such as the moon, sun, stars, planets, *etc.*), globes, and geographical maps. Searching this TC design code generates approximately 16,001 registrations and there is no mechanism for restricting the search to five-pointed stars, or six-pointed stars, or groups of stars. Users must expend considerable time reviewing all registered marks containing celestial bodies, globes, and geographical marks to locate the specific types of star marks that are of interest to them.

Searches using the TC Index codes can also provide imperfect results. For example, the TC Index does not have a specific code for Braille, and images are coded as SHAPES–CIRCLES, which retrieves over 45,000 search results. Searching large numbers of circles is an inefficient way to locate Braille marks. Searches generally are also less accurate than those performed using the USPTO Design Classification coding system.

By contrast, advances in coding under the USPTO Design Classification and its greater specificity provide the public with more precise and accurate search results than are currently available through the use of the TC Index codes. Additionally, the USPTO Design Classification is applied to pending applications for marks with designs as well as to registered marks with designs, thereby making it more useful in assessing potential likelihood of confusion. Examining attorneys rely solely on the USPTO Design Classification for examining and approving applications for marks with design codes for Federal registration.

The USPTO invests heavily in its electronic search systems, and commits considerable resources to ensuring the quality of design coding under the USPTO Design Classification system. When an application with design elements is filed, specially trained Federal employees in the Pre-Examination section of the USPTO review the mark drawing and assign USPTO Design Classification codes. In 2008, the USPTO amended the Rules of Practice in trademark cases to require a description of any mark not in standard character, in order to obtain the applicant's characterization of design elements to assist the USPTO in making accurate and comprehensive design-coding determinations. For example, employees use the applicant's mark description to clarify ambiguous design elements, thereby promoting correct design coding. The USPTO continues to provide comprehensive training to Pre-Examination employees on coding marks with design elements to ensure accuracy in coding. In addition, the USPTO performs quality review of the work of the employees, which improves confidence in the consistency and accuracy of the design coding.

The design coding in an application is reviewed again when a mark with design elements is assigned to a well-trained examining attorney to determine whether Federal law permits registration. The examining attorney reviews the mark, the design codes, and the mark description and may determine whether codes should be added or deleted. In 2008, the USPTO also provided rigorous training to its Legal Instruments Examiners, who assist in reviewing and updating application and registration data, on coding under the USPTO Design Classification. This review of design coding by different groups at the USPTO has greatly increased accuracy and decreased subjectivity in coding.

The USPTO Design Classification codes are also subject to external review by the public, which further ensures correct design coding. Each applicant for a mark that includes a design element receives a notice from the USPTO identifying the USPTO Design Classification codes assigned to their mark and providing detailed instructions on how to suggest additions or revisions to the assigned codes. Since 2005, the USPTO has sent approximately 367,000 such notices. These notices provide applicants with an opportunity to enhance the quality of the design coding of marks with design elements.

After a mark registers, filing receipts for post-registration filings submitted via the Trademark Electronic Application System notify registrants of the ability to request additions or corrections to the USPTO Design Classification codes assigned to their registered marks. Furthermore, upon acceptance of a registrant's Declaration of Use and/or Excusable Nonuse of Mark in Commerce under 15 U.S.C. 1058, the registration file is referred to USPTO employees for yet another review of the design codes assigned to the mark. Upon completion of the review, the USPTO notifies the registrant of the USPTO Design Classification codes assigned to their registered mark and provides information on revising design codes. The USPTO Web site also provides information on submitting corrections or additions to design codes in trademark applications and registrations. Even members of the public may submit a design coding suggestion. These measures all help to ensure a high level of coding accuracy.

The USPTO also updated the Manual in 2006 to allow for greater precision in identifying and coding designs. Many of the larger design-code sections were modified to create smaller sections. For example, three new design code entries for stars were added, which allow users to narrow searches to specific types of stars. These changes result in faster and more efficient electronic searches with little irrelevant data returned.

In view of the widespread use of the USPTO Design Classification system, its clear advantages and the limited use of the TC Index system, the impact of discontinuing coding based on the TC index appears minimal. The public and the USPTO will realize efficiencies. The USPTO will be able to devote more of its limited resources to the maintenance and improvement of the USPTO Design Classification system, which is more widely used by the public. All existing registrations coded with paper search designations will remain available in TESS and on microfilm. Design-coding

using the USPTO Design Classification system has continually improved through internal and external review of the coding and through internal training and quality-review procedures. The USPTO Design Classification system provides more accurate results, is available to all members of the public through the Internet, and is exclusively used by the examining attorneys at the USPTO.

Accordingly, the USPTO hereby gives notice of its intent to discontinue coding design marks with paper search designations. Any interested member of the public is invited to provide comments on this plan within thirty (30) days. The USPTO is providing this opportunity for public comment because the USPTO desires the benefit of public comment on the proposal; however, notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rule making for "'interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'" (quoting 5 U.S.C. 553(b)(A)). Persons submitting written comments should note that the USPTO may not provide a "comment and response" analysis of such comments as notice and an opportunity for public comment are not required.

Dated: December 21, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–32564 Filed 12–27–10; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

The following notice of scheduled meetings is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETINGS: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled two meetings for the following dates:

January 13, 2011 at 9:30 a.m.

January 20, 2011 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC. Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled these meetings to consider the issuance of various proposed rules. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–32749 Filed 12–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 28, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–32783 Filed 12–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 7, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–32780 Filed 12–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, January 14, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–32781 Filed 12–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday January 21, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–32782 Filed 12–23–10; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Notice of Advisory Committee Meeting Date Change

AGENCY: Missile Defense Agency (MDA), DoD.

ACTION: Notice.

SUMMARY: On Tuesday, December 14, 2010, the Department of Defense announced by publication in the **Federal Register** (75 FR 77848) closed meetings of the Missile Defense

Advisory Committee. These meetings have been rescheduled from January 19–20, 2011, to January 6–7, 2011. There are no other changes to the notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Bagnati, Designated Federal Officer at *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Dated: December 22, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32594 Filed 12–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of Section 33 U.S.C. 426–2, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Board on Coastal Engineering Research (hereafter referred to as "the Board").

The Board is a non-discretionary Federal advisory committee and shall provide the Coastal Engineering Research Center, through the Chief of Engineers/Commander, U.S. Army Corps of Engineers, independent advice and recommendations on reports of investigations made concerning shore erosion on coastal and lake waters and the protection of such shores.

The Chief of Engineers/Commander, U.S. Army Corps of Engineers may act upon the Board's advice and recommendations.

The Board shall report to the Secretary of the Army through the Chief of Engineers/Commander, U.S. Army Corps of Engineers.

The Department of Defense, through the Secretary of the Army, the Assistant Secretary of the Army (Civil Works), and the U.S. Corps of Engineers, shall provide support as deemed necessary for the performance of the Board's functions and shall ensure compliance with the requirements of the Federal Advisory Committee Act of 1972 and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b).

The Board shall be composed of not more than seven members, of whom four shall be officers of the Corps of Engineers and three shall be civilian engineers recommended by the Chief of Engineers due to his or her special fitness in the field of beach erosion and shore protection.

If the Secretary of Defense nominated the Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers to the Board by ex officio position, that person shall serve as the President of the Board; otherwise, the Board shall pick its president.

Board members, who are not full-time or permanent part-time federal officers or employees, shall be appointed by the Secretary of Defense to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employees, whose appointments must be renewed on an annual basis.

Pursuant to Public Law 91–611, Title I, Section 105, December 31, 1970, 84 Stat. 1819, Board members who are not full-time or permanent part-time federal officers or employees, may be paid at rates not to exceed the daily equivalent of the rate for a GS–15, step 10, for each day of attendance at Board meetings, not to exceed thirty days per year, in addition to the traveling and other necessary expenses connected with their duties on the Board in accordance with the provisions of Title 5, United States Code, Section 5703(b), (d), and Section 5707. All other Board members shall receive compensation for travel and per diem for official travel.

With DoD approval, the board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing DoD and Federal statutes and regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed by the Secretary of Defense according to governing DoD policy and procedures. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed on an annual basis.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's president. The estimated number of Board meetings is two each year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance for the duration at all committee and subcommittee meetings. In the absence of the Designated Federal Officer, an Alternate Designated Federal Officer shall attend each committee and subcommittee meeting in its entirety.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board on Coastal Engineering Research mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board on Coastal Engineering Research.

All written statements shall be submitted to the Designated Federal Officer for the Board on Coastal Engineering Research, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board on Coastal Engineering Research Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board on Coastal Engineering Research. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: December 21, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32506 Filed 12–27–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Entry Control Reconfiguration Area at Wright-Patterson Air Force Base, OH

AGENCY: U.S. Air Force, Air Force Material Command and 88th Air Base Wing.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulation (CFR) Parts 1500–1508), and U.S. Air Force (USAF) policy and procedures (32 CFR part 989), the USAF is issuing this notice to advise the public of its intent to prepare an EIS to evaluate potential environmental impacts associated with the construction and operation of the proposed Entry Control Reconfiguration of Area A by Wright-Patterson Air Force Base (WPAFB). Public scoping meetings will be held to assist in identifying reasonable alternatives, potential impacts and the relative significance of impacts to be analyzed in the EIS.

The purpose and need of the proposed action is to improve security, safety, and traffic flow into and on the military base. An EIS must be prepared to evaluate the environmental impacts associated with the relocation and reconfiguration of traffic entry into Area A of the base. The proposed action includes consolidating, relocating, and reconfiguring vehicle entry control points (ECPs); upgrading the ECPs to meet current Antiterrorism/Force Protection (ATFP) standards; and extending the base perimeter fence to encompass the Kittyhawk Center, enabling it to be contiguous with Area A of the base.

The EIS will address issues associated with ECPs and the on-base roadway network located in Area A of the installation. The EIS will address primary concerns related to the ECPs and existing roadway network where State Route 444 separates the Kittyhawk Center. Another concern involves the need to consolidate the existing ECPs in Area A into a smaller set of upgraded and strategically placed gates.

The EIS will analyze three alternatives: Closure existing State Route 444 through Area A and relocation of all traffic onto Kauffman Avenue and Central Avenue via Dayton-Yellow Springs Road, realignment of State Route 444 to the east of the WPAFB Kittyhawk Center and west of the existing railroad, and the No Action alternative. Technical studies related to the proposed reconfiguration of ECPs includes biological and cultural resources impact analysis, noise and air studies, and traffic analyses. The USAF intends to use the EIS process and documentation to fulfill its National Historic Preservation Act, Section 106 consultation requirements (36 CFR 800.8).

Scoping: The USAF will hold public scoping meetings in mid January and early February at the Fairborn Council Chambers to solicit public participation in this environmental analysis. The public will be invited to participate in the scoping meetings and review the Draft Final EIS. Notification of the meeting locations, dates, and time will be made in the local area and will be announced via local news media. Information gathered during the public scoping will be used in the development of the Draft EIS.

The scoping process will help identify the full range of reasonable alternatives, potential impacts and key issues to be emphasized in the environmental analysis. Recognizing that open communication of issues is a critical element of the EIS process, the USAF and WPAFB intend to ensure that the scoping experience is meaningful and productive for all participants. Accordingly, the project team is putting strong emphasis on an EIS process that fosters beneficial dialogue and relationship building among all stakeholders, particularly those in the Fairborn community in close proximity to WPAFB. Handicap assistance and translation service will be made available; please provide requests in advance to the point of contact listed below.

Oral and written comments presented at the public scoping meetings, as well as written comments received by the USAF during this scoping period and throughout the EIS process, will be considered in the preparation of the EIS. Letters and other written or oral comments received may be published in the EIS along with the names of the individuals making the comments. (Personal home addresses and phone numbers will not be published.) As required by law, comments will be addressed in the EIS and made available to the public. Private addresses will only be used to develop a mailing list of those individuals requesting copies of the EIS.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Mr. Vince King, Public Affairs Office, 5215 Thurlow Street, Bldg 70 Suite 4B, Wright-Patterson AFB, Ohio 45433–5543 (*Phone:* 937–522–3252; e-mail *88ABWPAX@WPAFB.AF.MIL*). Handicap assistance and translation service at the public meetings are available in advance through Mr. King.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–32616 Filed 12–27–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place on Tuesday, January 11th, 2011, at the SAFTAS Conference Facility, 1550 Crystal Drive Plaza Level, Arlington VA 22202. The meeting will be from 7:25 a.m.–4 p.m.

The purpose of the meeting is to hold the SAB quarterly meeting to conduct FOUO and classified discussions on the FY11 SAB studies tasked by the Secretary of the Air Force. In addition, the SAB will discuss and reach a consensus on the results of the Air Force Research Laboratory Science and Technology FY11 Review.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal

Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Anthony M. Mitchell, 301–981–7135, United States Air Force Scientific Advisory Board, 1602 California Ave., Ste. #251, Andrews AFB, MD 20762, *anthonym.mitchell@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–32600 Filed 12–27–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Thursday, January 6, 2011; 1 p.m.–5 p.m. EST. Friday, January 7, 2011; 8 a.m.–3:30 p.m. EST.

ADDRESSES: Augusta Marriott Hotel and Suites, Two Tenth Street, Augusta, GA 30901, (706) 722–8900.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4243 or facsimile (202) 586–0544; e-mail *CommissionDFO@nuclear.energy.gov*. Additional information may also be available at *http://www.brc.gov*.

SUPPLEMENTARY INFORMATION: This notice is being published less that 15 days from the date of the meeting and tour due to logistical circumstances and the inability to delay and reschedule the meeting and tour in a timely fashion. In addition, the dates for the meeting and tour have been publicly known for several weeks and posted on *http://www.brc.gov*.

Background: The President directed that the Blue Ribbon Commission on America's Nuclear Future (the Commission) be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste.

The Commission is scheduled to submit a draft report to the Secretary of Energy by July 2011, and a final report by January 2012.

Purpose of the Meeting: The meeting will provide the Commission with a range of local and regional perspectives from a wide variety of individuals and organizations. The Commission will also tour the Savannah River Site to see first-hand the site's facilities involved in the treatment, packaging and storage of used fuel and high-level wastes and other facilities related to the back end of the nuclear fuel cycle.

Tentative Agenda: The site tour is expected to start at 1 p.m. on January 6 with the Commissioners touring relevant areas of the Savannah River Site. The meeting on January 7 will begin at 8 a.m. at the Augusta Marriott Hotel and Suites. The Commission will hear presentations and statements from various stakeholder groups, and ask questions of the presenters, to provide additional information for Commission consideration. The meeting on January 7 is expected to conclude with public statements starting at approximately 2:30 p.m. The meeting will end by 3:30 p.m.

Public Participation: A drive-by tour of some of the Savannah River Site facilities is being offered to the general public on a first come, first served basis. Registration for the public tour will open at 8 a.m. on Monday, January 3, 2011, and close at 5 p.m. on Tuesday, January 4, 2011. Individuals interested in the public tour may register by calling 803–952–8467. A limited number of seats are available.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on January 7, 2011. Approximately one hour will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8 a.m. on January 7, 2011, at the Augusta Marriott Hotel and Suites. Registration to speak will close at 1 p.m., January 7, 2011.

Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Timothy A. Frazier, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, e-mail to *CommissionDFO@nuclear.energy.gov,* or post comments on the Commission Web site at *http://www.brc.gov*.

Additionally, the meeting will be available via live webcast. The link will be available at *http://www.brc.gov*.

Minutes: The minutes of the meeting will be available at *http://www.brc.gov* or by contacting Mr. Frazier. He may be reached at the postal address or e-mail address above.

Issued in Washington, DC, on December 22, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32579 Filed 12–27–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Grant Exclusive License

AGENCY: National Energy Technology Laboratory, Department of Energy.

ACTION: Notice of Intent To Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NETL hereby gives notice of its intent to grant an exclusive license to practice the inventions described and claimed in U.S. Patent Application Numbers 61/305,116 and 12/422,346, entitled "Method for designing a reforming and/or combustion catalyst system" and "Pyrochlore-type catalysts for the reforming of hydrocarbon fuels," respectively, to Pyrochem Catalyst

Corporation, having its principal place of business in Durham, NC. The inventions are owned by United States of America, as represented by the Department of Energy. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than January 12, 2011. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective exclusive license may be submitted to the Office of Chief Counsel, National Energy Technology Laboratory, 3610 Collins Ferry Rd., P.O. Box 880, Morgantown, WV 26506 or via facsimile at (412) 386–5949.

FOR FURTHER INFORMATION CONTACT: Jessica Sosenko, Technology Transfer Program Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236; Telephone (412) 386–7417; E-mail: *jessica.sosenko@netl.doe.gov*.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the DOE with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Pyrochem Catalyst Corporation, a new small business, has applied for an exclusive license to practice the inventions and has a plan for commercialization of the invention. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this notice the NETL Technology Transfer Manager (contact information listed above), receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Dated: December 10, 2010.

Anthony V. Cugini,

Director, National Energy Technology Laboratory.

[FR Doc. 2010–32584 Filed 12–27–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and International Security, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: Pursuant to Article VIII.C of the Agreement for Cooperation Concerning Civil Uses of Atomic Energy, signed April 4, 1972, as amended, the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office (TECRO) hereby jointly determine that the provisions in Article XI of the Agreement may be effectively applied with respect of the plan proposed by TECRO in March 2010 for the alteration in form or content of U.S.-origin nuclear material contained in irradiated fuel elements at the hot laboratory of the Institute of Nuclear Energy Research, Lungtan, Taiwan. The facility is hereby found acceptable to both parties pursuant to Article VIII.C of the Agreement for the sole purpose of alteration in form or content of irradiated fuel elements for the period ending December 31, 2015.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than January 12, 2011.

Dated: December 21, 2010.

For the Department of Energy.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2010–32586 Filed 12–27–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–46–000]

Kern River Gas Transmission Company; Notice of Application

December 21, 2010.

Take notice that on December 9, 2010, Kern River Gas Transmission Company (Kern River), 2755 E. Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for an order granting a certificate of public convenience to construct and operate the Mountain Pass Lateral and appurtenant facilities, 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.

Specifically, the Mountain Pass lateral is an 8.6-mile, 8-inch diameter pipeline routing generally south from Kern River mainlines along the western edge of Ivanpah Valley, over the Clark Mountains, and terminating on Molycorp property. Also, as part of the project Kern River proposes to construct a new meter station, capable of measuring and delivering 24,270 dekatherms per day (Dth/d) of natural gas, and a pig receiver facility to be located at the Molycorp facility.

Any questions concerning this application may be directed to Michael Loeffler, Senior Director, Certificates, Kern River Gas Transmission Company, MidAmerican Energy Pipeline Group, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103.

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 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32642 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 17, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1617–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.203: Non-Conforming Agreement Compliance Filing to be effective 1/15/2011.

Filed Date: 12/16/2010.

Accession Number: 20101216–5045.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1618–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.204: RP11–20 TOC Update to be effective 10/1/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5055.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1619–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits tariff filing per 154.203: Termination of MOGO Service Agreement E11181 to be effective N/A.

Filed Date: 12/16/2010.

Accession Number: 20101216–5056.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1620–000.

Applicants: Petal Gas Storage, L.L.C.

Description: Petal Gas Storage, L.L.C. submits tariff filing per 154.204: Miscellaneous Housekeeping Filing to be effective 1/17/2011.

Filed Date: 12/16/2010.

Accession Number: 20101216–5081.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1621–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: BP Amended Agreement to be effective 12/16/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5109.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1622–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.204: RP11–1474 TOC Update to be effective 11/1/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5127.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1623–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing—Enterprise Products to be effective 1/1/2011.

Filed Date: 12/16/2010.

Accession Number: 20101216–5134.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Docket Numbers: RP11–1624–000.

Applicants: Caledonia Energy Partners, L.L.C.

Description: Caledonia Energy Partners, L.L.C. submits tariff filing per 154.203: Caledonia Energy Partners Order No. 587–U Compliance Re-filing to be effective 11/1/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5186.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 28, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–32503 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 17, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER93–3–009.

Applicants: The United Illuminating Company.

Description: Notice of Change in Status of The United Illuminating Company.

Filed Date: 12/16/2010.

Accession Number: 20101216–5193.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER10–1362–001.

Applicants: Hatchet Ridge Wind, LLC.

Description: Hatchet Ridge Wind, LLC's Notice of Non-Material Change in Facts.

Filed Date: 12/16/2010.

Accession Number: 20101216–5194.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER10–2823–001.

Applicants: Barton Windpower LLC.

Description: Barton Windpower LLC submits tariff filing per 35: Compliance Filing to Baseline MBR Tariff to be effective 9/22/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5161.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER10–2825–001.

Applicants: Big Horn II Wind Project LLC.

Description: Big Horn II Wind Project LLC submits tariff filing per 35: Compliance Filing to Baseline MBR Tariff to be effective 9/22/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5164.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER10–3098–001.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits tariff filing per 35: Compliance filing, to be effective 12/1/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5004.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–3103–001.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits tariff filing per 35: Compliance filing, to be effective 12/1/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5005.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–3106–001.

Applicants: Public Service Company of New Hampshire.

Description: Public Service Company of New Hampshire submits tariff filing per 35: Compliance filing, to be effective 12/1/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5006.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–111–001.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35: PNM–WAPA Compliance Filing to be effective 10/15/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5023.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–1881–000; ER11–1881–001; ER11–1882–000; ER11–1882–001; ER11–1883–000; ER11–1883–001; ER11–1885–000; ER11–1885–001; ER11–1886–000; ER11–1886–001; ER11–1887–000; ER11–1887–001; ER11–1889–000; ER11–1889–001; ER11–1890–000; ER11–1890–001; ER11–1892–000; ER11–1892–001; ER11–1893–001; ER11–1894–000; ER11–1894–001.

Applicants: Burley Butte Wind Park, LLC; Golden Valley Wind Park, LLC; Milner Dam Wind Park, LLC; Oregon Trail Wind Park, LLC; Pilgrim Stage Station Wind Park, LLC; Thousand Springs Wind Park, LLC; Tuana Gulch Wind Park, LLC; Camp Reed Wind Park, LLC; Payne's Ferry Wind Park, LLC; Salmon Falls Wind Park, LLC; Yahoo Creek Wind Park, LLC.

Description: Third Supplement to the Consolidated Market-Based Rate Applications of Burley Butte Wind Park, LLC, *et. al.*

Filed Date: 12/17/2010.

Accession Number: 20101217–5113.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2039–000; ER11–2039–001.

Applicants: E–T Global Energy, LLC.

Description: Supplemental Information of Jim Wagner re Petition

for Acceptance of Initial Tariff Waivers and Blanket Authority.

Filed Date: 12/10/2010.

Accession Number: 20101210–5236.

Comment Date: 5 p.m. Eastern Time on Monday, January 03, 2011.

Docket Numbers: ER11–2370–000.

Applicants: Cambria CoGen Company.

Description: Cambria Submits Corrected App. B.

Filed Date: 12/16/2010.

Accession Number: 20101216–5124.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2394–000.

Applicants: Select Energy New York, Inc.

Description: Select Energy New York, Inc. submits tariff filing per 35.15: Notice of Cancellation of Market-Based Rate FERC Electric Tariff to be effective 2/14/2011.

Filed Date: 12/16/2010.

Accession Number: 20101216–5157.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2395–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: Changes to Attach H–1, Projected Net Revenue Req, to be effective 1/1/2011.

Filed Date: 12/17/2010.

Accession Number: 20101217–5003.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2396–000.

Applicants: ISO New England Inc., New England Power Pool Participants Commission.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Financial Assurance Policy to be effective 2/18/2011.

Filed Date: 12/17/2010.

Accession Number: 20101217–5010.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2397–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: 12_17_10_Revisions to Pro Forma OATT NITSA_NOA to be effective 12/20/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5040.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2398–000.

Applicants: Pan American Energy, LLC.

Description: Pan American Energy, LLC submits tariff filing per 35.12: Market-Based Rate Initial Tariff Baseline to be effective 2/20/2011.

Filed Date: 12/17/2010.

Accession Number: 20101217–5044.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2399–000.

Applicants: Eurus Combine Hills I LLC.

Description: Eurus Combine Hills I LLC submits tariff filing per 35: Order 697 Compliance and Request for Change in Category to be effective 12/18/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5077.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2400–000.

Applicants: ISO New England Inc., New England Power Pool Participants Commission.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: FCM/VAR Conforming Revisions to be effective 3/11/2011.

Filed Date: 12/17/2010.

Accession Number: 20101217–5082.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2401–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Ministerial Filing to Reflect Language Accepted in Docket No. ER09–1254–002 to be effective 7/26/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5091.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2402–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 316 Niagara Mohawk and WPS Syracuse Generation to be effective 2/15/2011.

Filed Date: 12/17/2010.

Accession Number: 20101217–5092.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2403–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 6 With RCID to be effective 12/18/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5126.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2403–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 6 With RCID to be effective 12/18/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5127.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–11–000.

Applicants: Northern Pass Transmission LLC.

Description: Application of Northern Pass Transmission LLC.

Filed Date: 12/16/2010.

Accession Number: 20101216–5198.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–5–000.

Applicants: National Fuel Gas Company.

Description: Change of Status Report for An Exempt Holding Company filed on behalf of National Fuel Gas.

Filed Date: 12/16/2010.

Accession Number: 20101216–5191.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: PH11–6–000.

Applicants: CTG Resources, Inc.

Description: FERC–65A Exemption Notification of CTG Resources, Inc.

Filed Date: 12/16/2010.

Accession Number: 20101216–5195.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: PH11–7–000.

Applicants: UIL Holdings Corporation.

Description: Notice of Material Change in Facts of UIL Holdings Corporation.

Filed Date: 12/16/2010.

Accession Number: 20101216–5196.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: PH11–8–000.

Applicants: Berkshire Energy Resources, Connecticut Energy Corp.

Description: Notice of Material Change in Facts of Berkshire Energy Resources and Connecticut Energy Corporation.

Filed Date: 12/16/2010.

Accession Number: 20101216–5197.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It

is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–32648 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 16, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–842–002.

Applicants: Energy Plus Holdings LLC.

Description: Supplemental Report of Energy Plus Holdings LLC Regarding Losses Sustained on Wholesale Sales.

Filed Date: 12/03/2010.

Accession Number: 20101203–5135.

Comment Date: 5 p.m. Eastern Time on Monday, December 27, 2010.

Docket Numbers: ER10–2156–002.

Applicants: Consumers Energy Company.

Description: Refund Report of Consumers Energy Company.

Filed Date: 12/16/2010.

Accession Number: 20101216–5070.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER10–2822–001.

Applicants: Atlantic Renewable Projects II LLC.

Description: Atlantic Renewable Projects II LLC submits tariff filing per 35: Compliance Filing to Baseline MBR Tariff to be effective 9/22/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5138.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER10–3171–001.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35: Compliance Filing for NorthWestern Electric Baseline Tariffs to be effective 9/29/2010.

Filed Date: 12/15/2010.

Accession Number: 20101215–5165.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011

Docket Numbers: ER10–3286–001.

Applicants: Millennium Power Partners, L.P.

Description: Millennium Power Partners, L.P. submits tariff filing per 35: FERC Electric MBR Tariff to be effective 9/30/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5110.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–1895–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35: ER11–1895 Compliance Filing to Correct eTariff Viewer Version of Attachments to be effective 10/1/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5024.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–1954–001.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits tariff filing per 35.17(b): IPL WPL—LBA Amendment to be effective 12/28/2010.

Filed Date: 12/15/2010.

Accession Number: 20101215–5190.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2005–001.

Applicants: Wind Capital Holdings, LLC.

Description: Wind Capital Holdings, LLC submits tariff filing per 35: Wind Capital MBR to be effective 12/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5044.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2009–001.

Applicants: Michigan Wind 1, LLC.

Description: Michigan Wind 1, LLC submits tariff filing per 35: Michigan Wind MBR to be effective 12/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5078.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2010–001.

Applicants: Exelon Wind 4, LLC.

Description: Exelon Wind 4, LLC submits tariff filing per 35: Exelon Wind 4 MBR to be effective 12/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5035.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2013–001.

Applicants: CR Clearing, LLC.

Description: CR Clearing, LLC submits tariff filing per 35: CR Clearing MBR to be effective 12/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5077.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2014–001.

Applicants: Cow Branch Wind Power, LLC.

Description: Cow Branch Wind Power, LLC submits tariff filing per 35: Cow Branch Wind MBR to be effective 12/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5040.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2325–000.

Applicants: California Pacific Electric Company, LLC.

Description: Supplement to Eichler Affidavit/Request of California Pacific Electric Company, LLC.

Filed Date: 12/16/2010.

Accession Number: 20101216–5082.

Comment Date: 5 p.m. Eastern Time on Thursday, December 23, 2010.

Docket Numbers: ER11–2352–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Errata to Original Service Agreement 2712 Among PJM, Exelon and ComEd to be effective 11/12/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5049.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2377–000.

Applicants: Northern Pass Transmission LLC.

Description: Northern Pass Transmission LLC submits tariff filing per 35.1: TSA between Northern Pass Transmission LLC and H.Q. Hydro Renewable Energy, Inc. to be effective 2/14/2011.

Filed Date: 12/15/2010.

Accession Number: 20101215–5157.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2378–000.

Applicants: Consolidated Edison Energy, Inc.

Description: Consolidated Edison Energy, Inc. submits tariff filing per 35: Consolidated Edison Energy Order 697 Compliance Filing to be effective 1/1/2011.

Filed Date: 12/15/2010.

Accession Number: 20101215–5158.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2379–000.

Applicants: Consolidated Edison Solutions, Inc.

Description: Consolidated Edison Solutions, Inc. submits tariff filing per 35: Consolidated Edison Solutions Order 697 Compliance Filing to be effective 1/1/2011.

Filed Date: 12/15/2010.

Accession Number: 20101215–5175.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2380–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Western WDT Service Agreement Modifications to be effective 2/14/2011.

Filed Date: 12/15/2010.

Accession Number: 20101215–5189.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2381–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Western IA Modifications to be effective 2/14/2011.

Filed Date: 12/15/2010.

Accession Number: 20101215–5191.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2382–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): NorthWestern Late-Filed Agreements to be effective 12/15/2010.

Filed Date: 12/15/2010.

Accession Number: 20101215–5192.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2383–000.

Applicants: Safe Harbor Water Power Corporation.

Description: Safe Harbor Water Power Corporation submits tariff filing per 35.1: Safe Harbor Water Power Corporation Baseline Electric Tariffs to be effective 12/16/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5000.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2384–000.

Applicants: Gilroy Energy Center, LLC.

Description: Notice of Expiration of Reliability Must-Run Agreement Between Gilroy Energy Center, LLC and California Independent System Operator Corporation.

Filed Date: 12/15/2010.

Accession Number: 20101215–5216.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 05, 2011.

Docket Numbers: ER11–2385–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Firm and Non-Firm PTP Transmission Service Agreements No. 1795, 1899, and 1900 to be effective 7/30/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5036.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2386–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–12–16 CAISO's Non Conforming LGIA for Coram Brodie Wind Project to be effective 12/10/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5076.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2387–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance filing to revise PJM Tariff Sec 4.2 per to Order 676F—NAESB WEQ to be effective 9/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5079.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2388–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits tariff filing per 35.1: SWEPCO RS and SA Baseline to be effective 12/17/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5080.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2389–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2707, Queue No. W1–112, CornerStone Power Holmdel, LLC & JCPL to be effective 11/19/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5111.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2390–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits tariff filing per 35.13(a)(2)(iii): RS 25 Valley ESIA 2010 revised to be effective 10/1/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5121.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2391–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Revisions to Sections 3.2.3 of the OATT Attach K Appendix and the OA Schedule 1 to be effective 10/25/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5123.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2392–000.

Applicants: New York State Reliability Council, L.L.

Description: New York State Reliability Council, L.L.C. submits Revision of the Installed Capacity Requirement for the New York Control Area.

Filed Date: 12/16/2010.

Accession Number: 20101216–5136.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Docket Numbers: ER11–2393–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per

35.13(a)(2)(iii): WMPA No. 2706, Queue No. V1–021, Cape May County & Atlantic City Electric to be effective 1/19/2010.

Filed Date: 12/16/2010.

Accession Number: 20101216–5139.

Comment Date: 5 p.m. Eastern Time on Thursday, January 06, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–32647 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 20, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–31–000.

Applicants: Northeast Utilities Service Company, The Connecticut Light and Power Company.

Description: NUSCO's Section 203 Application for Authority to Transfer Jurisdictional Facilities on Behalf of The Connecticut Light and Power Company and the Connecticut Transmission Municipal Electric Energy Cooperative.

Filed Date: 12/17/2010.

Accession Number: 20101217–5176.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–36–000.

Applicants: Alta Wind II Owner Lessor C.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind II Owner Lessor C.

Filed Date: 12/20/2010.

Accession Number: 20101220–5036.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: EG11–37–000.

Applicants: Vermont Wind, LLC.

Description: Notice of Self-Certification of EWG Status of Vermont Wind, LLC.

Filed Date: 12/17/2010.

Accession Number: 20101217–5183.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: EG11–38–000.

Applicants: Alta Wind II Owner Lessor E.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind II Owner Lessor E.

Filed Date: 12/20/2010.

Accession Number: 20101220–5060.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: EG11–39–000.

Applicants: Alta Wind II Owner Lessor D.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind II Owner Lessor D.

Filed Date: 12/20/2010.

Accession Number: 20101220–5061.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: EG11–40–000.

Applicants: Alta Wind II Owner Lessor B.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind II Owner Lessor B.

Filed Date: 12/20/2010.

Accession Number: 20101220–5062.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: EG11–41–000.

Applicants: Alta Wind II Owner Lessor A.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Wind II Owner Lessor A.

Filed Date: 12/20/2010.

Accession Number: 20101220–5063.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4143–024; ER10–2975–001; ER10–727–002; ER11–46–001; ER98–542–026.

Applicants: American Electric Power Service Corporation; CSW Energy Services, INC; AEP Retail Energy Partners LLC; AEP Energy Partners, INC; Central & South West Services, Inc.

Description: Triennial market analysis update of AEP MBR affiliates filed by American Electric Power Service Corporation. And Submission of omitted Exhibit JPD–1 from December 17, 2010 triennial update of American Electric Power Service Corporation.

Filed Date: 12/17/2010; 12/20/2010.

Accession Number: 20101217–5186; 20101220–5119.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER05–721–017.

Applicants: Judith Gap Energy LLC.

Description: Triennial Report of Judith Gap Energy LLC.

Filed Date: 12/20/2010.

Accession Number: 20101220–5124.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER06–230–014.

Applicants: Wolverine Creek Energy LLC.

Description: Triennial Report of Wolverine Creek Energy LLC.

Filed Date: 12/20/2010.

Accession Number: 20101220–5125.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER07–810–012.

Applicants: Grays Harbor Energy LLC.

Description: Triennial Report of Grays Harbor Energy LLC.

Filed Date: 12/20/2010.

Accession Number: 20101220–5123.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER09–430–008.

Applicants: Willow Creek Energy LLC

Description: Triennial Report of Willow Creek Energy LLC.

Filed Date: 12/20/2010.

Accession Number: 20101220–5122.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER09–1214–001; EL09–78–002.

Applicants: Entergy Operating Companies.

Description: Compliance Refund Report of Entergy Services, Inc.

Filed Date: 12/17/2010.

Accession Number: 20101217–5169.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–956–003.

Applicants: Vantage Wind Energy LLC.

Description: Triennial Report of Vantage Wind Energy LLC.

Filed Date: 12/20/2010.

Accession Number: 20101220–5121.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER10–1508–001.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits tariff filing per 35: Compliance Filing—FERC Order 676–3 Language Implementation to be effective 4/1/2011.

Filed Date: 12/20/2010.

Accession Number: 20101220–5129.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER10–1777–002; ER10–2979–002; ER10–2980–001; ER10–2983–001; ER10–2988–001.

Applicants: California Power Holdings, LLC, Thompson River Power, LLC, Castleton Power, LLC, Sundevil Power Holdings LLC, Castleton Energy Services, LLC.

Description: Motion of California Power Holdings, LLC, *et. al.* Notice of Non-Material Change in Status.

Filed Date: 12/17/2010.

Accession Number: 20101217–5171.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–1692–002.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–12–17 CAISO's Filing to conform tariff records on file to eTariff System to be effective 11/1/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5147.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–2826–001; ER10–2827–001.

Applicants: Buffalo Ridge I LLC; Buffalo Ridge II LLC.

Description: Buffalo Ridge I LLC submits tariff filing per 35: Compliance Filing to Baseline MBR Tariff to be effective 9/22/2010.

Filed Date: 12/17/2010.

Accession Number: 20101217–5000.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–2979–001.

Applicants: California Power Holdings, LLC.

Description: California Power Holdings, LLC submits tariff filing per 35: Compliance Filing—Amendment to MBR Tariff to be effective 2/15/2011.

Filed Date: 12/17/2010.

Accession Number: 20101217–5098.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER10–3006–001.

Applicants: Moraine Wind LLC.

Description: Moraine Wind LLC submits tariff filing per 35: Compliance Filing to Baseline MBR Tariff to be effective 9/27/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5130.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER10–3153–002.

Applicants: City of Vernon, California.

Description: City of Vernon, California submits tariff filing per 35: City of Vernon TO Tariff Baseline Compliance Filing to be effective 9/29/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5134.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–1996–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits tariff filing per 35.17(b): Amendment City of Eudora, KS Joint Filing to Defer Effective Date to be effective 6/1/2011.

Filed Date: 12/20/2010.

Accession Number: 20101220–5004.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2404–000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits tariff filing per 35.13(a)(2)(iii: Operation and Maintenance Agreement between CTMEEC and CL&P to be effective 6/1/2011.

Filed Date: 12/20/2010.

Accession Number: 20101220–5001.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2405–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: TO5 Settlement Offer, to be effective 6/1/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5002.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2406–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: Kansas Power Pool Confirmation Letter Re-dispatch Services, to be effective 11/1/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5006.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2407–000.

Applicants: First Commodities Ltd.

Description: First Commodities Ltd submits a notice of cancellation.

Filed Date: 12/17/2010.

Accession Number: 20101220–0201.

Comment Date: 5 p.m. Eastern Time on Friday, January 07, 2011.

Docket Numbers: ER11–2408–000.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits tariff filing per 35.13(a)(2)(iii: Atlantic Path 15 TRR Revisions, to be effective 2/19/2011.

Filed Date: 12/20/2010.

Accession Number: 20101220–5043.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2409–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits tariff filing per 35.13(a)(2)(iii:

Rate Schedule No. 92 with Reedy Creek Improvement District to be effective 1/1/2011.

Filed Date: 12/20/2010.

Accession Number: 20101220–5049.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2410–000.

Applicants: Hinson Power Company, LLC.

Description: Hinson Power Company, LLC submits tariff filing per 35: Hinson Power Company requests Category 1 status effective 12/21/2010 to be effective 12/21/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5064.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2411–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA AV Solar Ranch One Project SA No. 96 to be effective 12/21/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5128.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2412–000.

Applicants: Bangor Hydro Electric Company.

Description: Bangor Hydro Electric Company submits tariff filing per 35.13(a)(2)(iii: Interconnection Agreement with PPL Maine to be effective 12/11/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5131.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2413–000.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Company, Notice of Cancellation of Mutual Operating Agreement, Service Agreement No. 969.

Filed Date: 12/20/2010.

Accession Number: 20101220–5133.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–2415–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35: Compliance Filing in Accordance with November 18, 2010 Order in ER09–1254–002 to be effective 7/26/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5154.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–32646 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08–19–002]

North American Electric Reliability Corporation; Notice of Compliance Filing

December 20, 2010.

Take notice that on December 1, 2010, North American Electric Reliability Corporation, in response to Paragraph 274 of the Federal Energy Regulatory Commission's (Commission) Order No. 729 issued on November 24, 2009,[1] submitted a compliance filing of proposed Violation Risk Factors and Violation Severity Levels for Available Transfer Capability Reliability Standards.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

[1] *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System,* 129 FERC ¶ 61, 155 (2009).

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32510 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–36–000]

Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northampton Expansion Project and Request for Comments on Environmental Issues

December 21, 2010.

The Staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Northampton Expansion Project (Project) involving construction and operation of facilities by Tennessee Gas Pipeline Company (Tennessee) in Hampden County, Massachusetts. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The Notice of Intent (NOI) announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on January 20, 2011.

Comments on the project may be submitted in written form or electronically, as described in the public participation section of this notice.

This NOI is being sent to the Commission's current environmental mailing for this project, which includes affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; parties to this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (*http://www.ferc.gov/for-citizens/citizen-guides.asp*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in FERC's proceedings.

Summary of the Proposed Project

The Project involves the construction of the new Southwick Compressor Station 260A at 248 Feeding Hills Road in the Town of Southwick, Hampden County, Massachusetts. The Project has been sited on a 5.32-acre parcel adjacent to Tennessee's existing 8-inch diameter Northampton Lateral Line. The Compressor Station will consist of a 2,000-horsepower electric engine compression unit housed within a new building, and other associated facilities, including a gas cooler unit, vent silencer, a fan, a control building, on-site access driveway, and overhead electrical line. Ancillary equipment will also include an emergency generator, hot water boiler and space heater, all fueled by natural gas. In order to connect the Compressor Station to the Northampton Lateral, Tennessee will need to install a total of 380 feet of pipeline: (i) 155 feet of pipeline on the Compressor Station site; and (ii) 225 feet of pipeline within a 60-foot wide easement connecting the Compressor Station site to the Northampton Lateral.

A location map depicting the proposed facilities is attached to this NOI as Appendix 1.[1]

Land Requirements for Construction

Tennessee proposes to construct the Project on a parcel of land measuring approximately 5.32 acres which is wholly owned by Tennessee. Construction will require approximately 3.28 acres of new land disturbance of which 1.57 acres will be permanently altered by operation of the facility. Approximately 2.82 acres (over 50 percent) of the 5.32-acre parcel would be utilized as buffer and visual screening both during and post-construction and will not be affected by either construction or operation of the facility. Portions of this work are also required within a proposed 0.31-acre pipeline easement necessary to connect the compressor station to Tennessee's existing pipeline. Following construction, the ground surfaces immediately surrounding the facility and within the proposed fence line will be converted to gravel and maintained lawn to facilitate maintenance of a clear and accessible operational area.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as results of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources
- Vegetation and wildlife;
- Air quality and noise
- Reliability and safety

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

[1] The appendices referenced in this notice are not printed in the **Federal Register**, but they are being provided to all those who receive this notice in the mail. Copies of the NOI can be obtained from the Commission's Web site at the "eLibrary" link, Commission's Public Reference Room, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status on consultations under section 106.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses specific to the Project:

- Potential noise and vibration impacts from compressor station
- Air quality impacts from the compressor station construction and operation

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC, on or before January 20, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–36–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at

FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32641 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ11–5–000]

City of Riverside, California; Notice of Filing

December 21, 2010.

Take notice that on December 13, 2010, the City of Riverside, California submitted its annual revision to its Transmission Revenue Balancing Account Adjustment and a related modification to Appendix I of its Transmission Owner Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32643 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12187–016]

Price Dam Partnership, Limited; Notice of Request for Extension of Time to Commence and Complete Construction and Soliciting Comments, Motions to Intervene, and Protests

December 21, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time.

b. *Project No.:* 12187–016.

c. *Date Filed:* December 8, 2010.

d. *Applicant:* Price Dam Partnership, Limited.

e. *Name of Project:* Price Dam Hydroelectric Project.

f. *Location of Project:* At the existing St. Louis District's U.S. Army Corps of Engineers (Corps) Melvin Price Locks and Dam on the Mississippi River, in Madison County, Illinois. The project would occupy approximately 1.8 acres of Federal lands.

g. *Filed Pursuant to:* Public Law 111–60, 123 STAT. 1995.

h. *Applicant Contact:* Mr. John A. Whittaker, IV, Winston & Strawn LLP, 1700 K Street NW., Washington, DC 20006; (202) 282–5766 and e-mail *jwhittak@winston.com.*

i. *FERC Contact:* Kelly Houff, (202) 502–6393, *Kelly.Houff@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 21, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) or the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters may submit 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.

Please include the project number (P–12187–016) on any comments, motions, or protests filed.

k. *Description of Request:* The licensee requests that the Commission grant a two-year extension of time from the existing deadline of July 28, 2011 to July 28, 2013 to commence project construction of the Price Dam Hydroelectric Project. Additionally, the licensee requests a two-year extension of time from July 28, 2014 to July 28, 2016 to complete project construction. This will be the second 2-year extension of three authorized by Public Law No. 111–60.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: All filings must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32644 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–2–000]

Smart Grid Interoperability Standards; Notice of Technical Conference

December 21, 2010.

Take notice that the Federal Energy Regulatory Commission will hold a Technical Conference on Monday, January 31, 2011 at the Commission's headquarters at 888 First Street, Washington, DC 20426, beginning at 1 p.m. (EST) in the Commission Meeting Room. The technical conference will be led by Commission staff. Commissioners may attend the conference.

The conference will be open for the public to attend and advance registration is not required. The purpose of the technical conference is to obtain further information to aid the Commission's determination of whether there is "sufficient consensus" that the five families of standards posted by the National Institute of Standards and Technology and included in this proceeding are ready for Commission consideration in a rulemaking proceeding, as directed by section 1305(d) of the Energy Independence and Security Act of 2007.

A subsequent notice will be issued by the Commission providing an agenda of the conference. Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event. The conference will be Webcast. Anyone with Internet access who desires to listen to this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY); or send a Fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact Sandra Waldstein at *Sandra.Waldstein@ferc.gov* or (202) 502–8092, Ray Palmer at *Ray.Palmer@ferc.gov* or (202) 502–6569, or Annabelle Lee at *Annabelle.Lee@ferc.gov* or (202) 502–8709.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32640 Filed 12–27–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0877; FRL–8858–9]

Endocrine Disruptor Screening Program (EDSP); Announcing the Availability of a Draft for Weight-of-Evidence Guidance Document: Evaluating Results of EDSP Tier 1 Screening To Identify Candidate Chemicals for Tier 2 Testing; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA published a notice in the **Federal Register** of November 4, 2010, concerning a draft guidance document titled, "Weight-of-Evidence Guidance Document: Evaluating Results of EDSP Tier 1 Screening To Identify Candidate Chemicals for Tier 2 Testing." EPA received a request for an extension of the comment period. EPA is extending the comment period from January 3, 2011, to February 3, 2011.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0877, must be received on or before February 3, 2011.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 4, 2010.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Don Bergfelt, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8472; e-mail address: *bergfelt.don@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

This document extends the public comment period established in the **Federal Register** notice of November 4, 2010 (75 FR 67963) (FRL–8849–8). In that notice, EPA announced the

availability for public review and comment of a draft guidance document titled, "Weight-of-Evidence Guidance Document: Evaluating Results of EDSP Tier 1 Screening To Identify Candidate Chemicals for Tier 2 Testing." EPA is hereby extending the comment period, which was set to end on January 3, 2011, to February 3, 2011.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** notice of November 4, 2010. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Endocrine disruptors, Screening assays, Weight-of-evidence.

Dated: December 20, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–32662 Filed 12–27–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Economic Inclusion.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Economic Inclusion ("the Committee") is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on important initiatives focused on expanding access to banking services by underserved populations. The Committee will continue to provide advice and recommendations on initiatives to expand access to banking services by underserved populations. The Committee will continue to review various issues that may include, but not be limited to, basic retail financial services such as check cashing, money orders, remittances, stored value cards, short-term loans, savings accounts, and other services to promote asset accumulation and financial stability. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2006. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: December 21, 2010.

Valerie J. Best,

Assistant Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. 2010–32502 Filed 12–27–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Board Clearance Officer — Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* The Report of Net Debit Cap.

Agency form number: FR 2226.

OMB control number: 7100–0217.

Frequency: Annual.

Reporters: Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 1,298 hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 1,298.

General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248–1, and 464). The information submitted by respondents for the payments system risk reduction program is exempt from disclosure under exemption (b)(4) of the Freedom of Information Act (FOIA), which exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." (5 U.S.C. 552(b)(4)). In addition, information reported in connection with the second and third resolutions may be protected under Section (b)(8) of FOIA, to the extent that such information is based on the institution's CAMELS rating, and thus is related to examination reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(8)).

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Federal Reserve's Payments System Risk (PSR) policy. The reporting panel includes all financially healthy depository institutions with access to the discount window. The Report of Net Debit Cap comprises three resolutions, which are filed by a depository institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second resolution is used to establish a self-assessed net debit cap. The third resolution is used to establish simultaneously a self-assessed net debit cap and maximum daylight overdraft capacity. Copies of the model resolutions are located in Appendix B, of the PSR policy, that can be found at *http://www.federalreserve.gov/paymentsystems/psr_relpolicies.htm.*

Current Actions: On October 14, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 63181) requesting public comment for 60 days on the extension, without revision, of

this information collection. The comment period for this notice expired on December 13, 2010. The Federal Reserve did not receive any comments.

2. *Report title:* Statement of Purpose for an Extension of Credit by a Creditor.

Agency form number: FR T–4.

OMB control number: 7100–0019.

Frequency: On occasion.

Reporters: Brokers and dealers.

Estimated annual reporting hours: 459 hours.

Estimated average hours per response: 10 minutes.

Number of respondents: 135.

General description of report: This information collection is mandatory and authorized by section 7 of the '34 Act (15 U.S.C. 78g). In addition, the FR T–4 is required by Section 220.6 of Regulation T (12 CFR 220.6). The FR T–4 data are not submitted to the Federal Reserve System and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 authorizes the Federal Reserve to regulate securities credit extended by brokers and dealers, banks, and other lenders. The FR T–4 is a purpose statement for brokers and dealers. The purpose statement is a recordkeeping requirement for brokers and dealers to document the purpose of their loans secured by margin stock. Margin stock is defined as (1) stocks that are registered on a national securities exchange or any over-the-counter security designated for trading in the National Market System, (2) debt securities (bonds) that are convertible into margin stock, and (3) shares of most mutual funds.

Current Actions: On October 14, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 63181) requesting public comment for 60 days on the extension, without revision, of three reports that collect information on certain extensions of credit secured by margin stock. The comment period for this notice expired on December 13, 2010. The Federal Reserve did not receive any comments.

Final approval under OMB delegated authority of the extension for three years, with clarification, of the following reports:

Report titles: Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers), Deregistration Statement for Persons Registered Pursuant to Regulation U, Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration Under Regulation U; Annual Report, and Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form numbers: FR G–1, FR G–2, FR G–3, FR G–4, and FR U–1.

OMB control numbers: 7100–0011: FR G–1, FR G–2, and FR G–4; 7100–0018: FR G–3; and 7100–0115: FR U–1.

Frequency: On occasion and annual.

Reporters: Individuals and business.

Annual reporting hours: 1,207 reporting hours; 1,604 recordkeeping hours.

Estimated average hours per response: FR G–1, 2.5 hours; FR G–2, 15 minutes; FR G–3, 10 minutes; FR G–4, 2.0 hours; and FR U–1, 10 minutes.

Number of respondents: FR G–1, 25; FR G–2, 40; FR G–3, 284; FR G–4, 567; and FR U–1, 50.

General description of report: These mandatory information collections are authorized by section 7 of the '34 Act (15 U.S.C. 78g). In addition, the FR U–1 is required by Sections 221.3(c)(1)(i) and (2)(i) of Regulation U (12 CFR 221.3(c)(1)(i) and (2)(i)), and the FR G–1, G–2, G–3, and G–4 are required by Sections 221.3(b)(1), (2), and (3), and (c)(1)(ii) and (2)(ii) of Regulation U (12 CFR 221.3(b)(1), (2), and (3), and (c)(1)(ii) and (2)(ii)).

The information collected in the FR G–1 and the FR G–4 is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (6)). Confidentiality determinations would have to be made on a case by case basis. The FR G–2 does not collect confidential information. The FR U–1 and FR G–3 data are not submitted to the Federal Reserve System and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 authorizes the Federal Reserve to regulate securities credit extended by brokers and dealers, banks, and other lenders. The purpose statements, FR U–1 and FR G–3, are recordkeeping requirements for brokers and dealers, banks, and other lenders, respectively, to document the purpose of their loans secured by margin stock. Margin stock is defined as (1) stocks that are registered on a national securities exchange or any over-the-counter security designated for trading in the National Market System, (2) debt securities (bonds) that are convertible into margin stock, and (3) shares of most mutual funds. Lenders other than brokers and dealers and banks must register and deregister with the Federal Reserve using the FR G–1 and FR G–2, respectively, and they must file the FR G–4 annual report while registered. The Federal Reserve uses the data to identify lenders subject to Regulation U, to verify their compliance with the regulation, and to monitor margin credit.

Current Actions: On October 14, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 63181) requesting public comment for 60 days on the extension, with clarification, of three of the six mandatory reports that collect information on certain extensions of credit secured by margin stock. The comment period for this notice expired on December 13, 2010. The Federal Reserve did not receive any comments. The clarifications will be implemented as proposed.

Board of Governors of the Federal Reserve System, December 22, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–32590 Filed 12–27–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along

with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 28, 2011.

ADDRESSES: You may submit comments, identified by FR 1379; FR 2225; FR 3054; FR Y–3, FR Y–3N, FR Y–4; FR Y–3F; FR K–1; or FR K–2 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority, the Implementation of the Following Report:

Report title: Payment Systems Surveys: Ad Hoc Payments Systems Survey, Currency Quality Sampling Survey, Currency Quality Survey, and Currency Functionality Survey.

Agency form number: FR 3054a, FR 3054b, FR 3054c, and FR 3054d.

OMB control number: 7100— to be assigned.

Frequency: Annual, semi-annual, and on occasion.

Reporters: Financial and nonfinancial businesses (banknote equipment manufacturers, or global wholesale bank note dealers).

Estimated annual reporting hours: FR 3054a: 15,000 hours; FR 3054b: 90 hours;

FR 3054c: 1,500 hours; and FR 3054d: 960 hours.

Estimated average hours per response: FR 3054a: 15 hours; FR 3054b: 0.5 hours;

FR 3054c: 30 hours; and FR 3054d: 48 hours.

Number of respondents: FR 3054a: 100; FR 3054b: 180; FR 3054c; 25; and FR 3054d: 20.

General description of report: These information collections are authorized pursuant to Section 11(d) of the Federal Reserve Act (12 U.S.C. 248(d)) and are voluntary. The ability of the Federal Reserve to maintain the confidentiality of information provided by respondents to the Payment Systems surveys would be determined on a case-by-case basis depending on the type of information provided for a particular survey. Depending upon the survey questions, confidential treatment could be warranted under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 3054a would be an event-driven survey used to obtain information specifically tailored to the Federal Reserve's operational and fiscal agency responsibilities. The FR 3054a could be conducted independently by the Federal Reserve, jointly with another government agency, or a Federal Reserve Bank. The FR 3054b would be an annual survey to assess the quality of currency in circulation and would be conducted jointly with the Federal Reserve Bank of San Francisco's Cash Product Office (CPO), the Federal Reserve Bank of Richmond's Currency Technology Office (CTO), and each Federal Reserve Bank's cash department. The FR 3054c would be a semi-annual survey to determine depository institutions' and Banknote Equipment Manufacturers' (BEMs) opinions of currency quality and would be conducted jointly with the CPO and CTO. The FR 3054d would be an annual survey to assess the functionality of Federal Reserve notes in banknote handling equipment. The FR 3054d data collected from BEMs would be used as input for future designs of Federal Reserve notes. The FR 3054d would be conducted jointly with the U.S. Treasury's Bureau of Engraving and Printing and the CTO. The FR 3054a, FR 3054b, FR 3054c, and FR 3054d would be sent to financial and nonfinancial businesses.

The Federal Reserve would use the data collected from these surveys to determine: (1) Demand for currency and coin, (2) market preferences regarding currency quality, (3) quality of currency in circulation, (4) features used by bank note authentication equipment to denominate and authenticate bank notes, and (5) whether changes to Federal Reserve Bank sorting algorithms are necessary to ensure that currency in circulation remains fit for commerce.

Proposal to approve under OMB delegated authority the extension for three years, with revision, the following reports:

1. *Report title:* Consumer Satisfaction Questionnaire, Federal Reserve Consumer Help—Consumer Survey, and Consumer Online Complaint Form.

Agency form number: FR 1379a, FR 1379b, and FR 1379c.

OMB control number: 7100–0135.

Frequency: Event generated.

Reporters: Consumers.

Estimated annual reporting hours: FR 1379a: 116 hours; FR 1379b: 167 hours; FR 1379c: 1,351 hours.

Estimated average hours per response: FR 1379a: 5 minutes; FR 1379b: 5 minutes; FR 1379c: 10 minutes.

Number of respondents: FR 1379a: 1,391; FR 1379b: 2,001; FR 1379c: 8,107.

General description of report: This information collection is voluntary and is authorized by law pursuant the Federal Trade Commission Improvement Act (15 U.S.C. 57(a)(f)). The FR 1379a is not considered confidential. The FR 1379b collects the respondent's name and the respondent may provide other personal information and information regarding his or her complaint in response to question five. The FR 1379c collects the respondent's third-party representative if the respondent has such a representative. Thus, some of the information collected on the FR 1379b and c is considered confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(7)).

Abstract: The FR 1379a questionnaire is sent to consumers who have filed complaints with the Federal Reserve against State member banks. The information is used to assess their satisfaction with the Federal Reserve's handling and written response to their complaint at the conclusion of an investigation. The FR 1379b questionnaire is sent as needed to consumers who contact the Federal Reserve Consumer Help (FRCH) to file a complaint or inquiry. The information is used to determine whether consumers are satisfied with the way the FRCH handled their complaint. Consumers use the FR 1379c to electronically submit a complaint against a financial institution to the FRCH.

Current Actions: The Federal Reserve proposes to revise the FR 1379c online complaint form by (1) expanding the contact section for complaints submitted on behalf of a consumer by a third-party representative, (2) adding a field to provide the financial institution's routing number, and (3) deleting the question on how the consumer learned about the FRCH. The Federal Reserve proposes to extend the FR 1379a and FR 1379b without revision.

2. *Report title:* Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company, Notification for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.

Agency form number: FR Y–3, FR Y–3N, and FR Y–4.

OMB control number: 7100–0121.

Frequency: Event generated.

Reporters: Corporations seeking to become bank holding companies (BHCs), or existing BHCs and State chartered banks that are members of the Federal Reserve System.

Estimated annual reporting hours: FR Y–3 Section 3(a)(1): 5,565 hours; FR Y–3 Section 3(a)(3) and 3(a)(5): 9,081 hours; FR Y–3N Section 3(a)(1), 3(a)(3), and 3(a)(5): 225 hours; FR Y–4 Complete notification: 936 hours; FR Y–4 Expedited notification: 90 hours; and FR Y–4 Post-consummation: 8 hours.

Estimated average hours per response: FR Y–3 Section 3(a)(1): 53 hours; FR Y–3 Section 3(a)(3) and 3(a)(5): 63.5 hours; FR Y–3N Section 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours; FR Y–4 Complete notification: 12 hours; FR Y–4 Expedited notification: 5 hours; and FR Y–4 Post-consummation: 30 minutes.

Number of respondents: FR Y–3 Section 3(a)(1): 105; FR Y–3 Section 3(a)(3) and 3(a)(5): 143; FR Y–3N Section 3(a)(1), 3(a)(3), and 3(a)(5): 45; FR Y–4 Complete notification: 78; FR Y–4 Expedited notification: 18; and FR Y–4 Post-consummation: 16.

General description of report: These information collections are mandatory (12 U.S.C. 1842(a), 1844(b), 1843(j)). The information submitted in the FR Y–3, FR Y–3N, and FR Y–4 is considered to be public unless an institution requests confidential treatment for portions of the particular application or notification. Applicants may rely on any Freedom of Information Act (FOIA) exemption, but such requests for confidentiality must contain detailed justifications corresponding to the claimed FOIA exemption. Requests for confidentiality must be evaluated on a case-by-case basis.

Abstract: The Federal Reserve requires the submission of these filings for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company (BHC) Act of 1956. These filings collect information on proposals by bank holding companies involving formations, acquisitions, mergers, and nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to financial and managerial factors, permissibility, competitive effects, net public benefits, and the impact on the convenience and needs of affected communities.

Current Actions: The Federal Reserve proposes to revise the FR Y–3 instructions by requesting additional information in Section 7. Any principal that would own 10 percent or more of the equity of the Applicant would be asked to provide an Interagency Biographical and Financial Report (FR 2081c; OMB No. 7100–0134) (IBFR). If the principal is a corporation or partnership, it would be asked to provide financial statements (balance sheets and income statements) for the two most recent fiscal years and the most recent quarter end. Applicants would be asked to discuss any negative trends in the financial statements.

Proposal to approve under OMB delegated authority the extension for three years, without revision, the following reports:

1. *Report title:* Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2225.

OMB control number: 7100–0216.

Frequency: Annual.

Reporters: Foreign banks with U.S. branches or agencies.

Estimated annual reporting hours: 45 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 45.

General description of report: This information collection is authorized pursuant to sections 11(i), 16, and 19(f) of the Federal Reserve Act (12 U.S.C. 248(i), 248–1, and 464). A foreign banking organization (FBO) is required to respond in order to obtain or retain a benefit, *i.e.,* in order for the U.S. branch or agency of an FBO to establish and maintain a non-zero net debit cap. The information submitted by respondents is not confidential; however, respondents may request confidential treatment for portions of the report. Data may be considered confidential and exempt from disclosure under section (b)(4) of the Freedom of Information Act if it constitutes commercial or financial information and it would customarily not be released to the public by the person from whom it was obtained (5 U.S.C. 552(b)(4)).

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Reserve Bank account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's

capital. For FBOs, a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap.

Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in determining its U.S. capital equivalency measure, which is then used to calculate its net debit cap, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225 may use an alternative capital measure based on its nonrelated liabilities.

2. *Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K.

Agency form number: FR K–1.

OMB control number: 7100–0107.

Frequency: Event generated.

Reporters: State member banks, Edge and agreement corporations, bank holding companies, and certain FBOs.

Estimated annual reporting hours: Attachments A and B, 161 hours; Attachments C through G, 120 hours; Attachments H and I, 558 hours; Attachment J, 30 hours; Attachment K, 20 hours.

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours.

Number of respondents: Attachments A and B, 7; Attachments C through G, 6; Attachments H and I, 12; Attachment J, 3; Attachment K, 1.

General description of report: This information collection is mandatory pursuant to sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601–604(a), 611–631) and sections 4(c)(13), 4(c)(14), and 5(c) of the BHC Act (12 U.S.C. 1843(c)(13), 1843(c)(14), 1844(c)). The information submitted in the FR K–1 is considered to be public unless an institution requests confidential treatment for portions of the particular application or notification. Applicants may rely on any FOIA exemption, but such requests for confidentiality must contain detailed justifications corresponding to the claimed FOIA exemption. Requests for confidentiality must be evaluated on a case-by-case basis.

Abstract: Subpart A of Regulation K governs the foreign investments and activities of member banks, Edge and agreement corporations, bank holding companies, and certain investments by foreign organizations. Subpart C of Regulation K governs investments in export trading companies. The FR K–1 information collection contains eleven attachments for the application and notification requirements embodied in Subparts A and C of Regulation K. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the BHC Act of 1956.

3. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.

Agency form number: FR K–2.

OMB control number: 7100–284.

Frequency: Event generated.

Reporters: Foreign banks.

Estimated annual reporting hours: 630 hours.

Estimated average hours per response: 35 hours.

Number of respondents: 18.

General description of report: This information collection is mandatory pursuant to sections 7, 10, and 13 of the International Banking Act (12 U.S.C. 3105, 3107, 3108). The applying or notifying organization may request that portions of the information contained in the FR K–2 be afforded confidential treatment. To do so, applicants must demonstrate how the information for which confidentiality is requested would fall within the scope of one or more of the exemptions contained in the Freedom of Information Act. Any such request would have to be evaluated on a case-by-case basis.

Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office; to acquire ownership or control of a commercial lending company in the United States; or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise FBOs with offices in the United States.

4. *Report title:* Application for a Foreign Organization to Acquire a U.S. Bank or Bank Holding Company.

Agency form number: FR Y–3F.

OMB control number: 7100–0119.

Frequency: Event generated.

Reporters: Any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or BHC.

Estimated annual reporting hours: Initial application, 90 hours; subsequent application, 490 hours.

Estimated average hours per response: Initial application, 90 hours; subsequent application, 70 hours.

Number of respondents: Initial application, 1; subsequent application, 7.

General description of report: This information collection is required to obtain or retain a benefit under sections 3(a), 3(c), and 5(a) through 5(c) of the BHC Act (12 U.S.C. 1842(a), (c), 1844(a)–(c). The information provided in the application is not confidential unless the applicant specifically requests confidentiality and the Federal Reserve approves the request.

Abstract: Under the BHC Act, submission of this application is required for any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or BHC. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served. The Federal Reserve uses the information, in part, to fulfill its supervisory responsibilities with respect to FBOs in the United States.

Board of Governors of the Federal Reserve System, December 22, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–32606 Filed 12–27–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 11, 2011.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Jan Malcolm Jones, Jr., and Leslie Ann Jones,* both in Jacksonville, Florida; to retain outstanding voting shares of Florida Capital Group, Inc., and thereby indirectly retain outstanding voting shares of Florida Capital Bank, both in Jacksonville, Florida.

Board of Governors of the Federal Reserve System, December 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–32651 Filed 12–27–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2010–32092) published on page 80501 of the issue for Wednesday, December 22, 2010.

Under the Federal Reserve Bank of New York heading, the entry for Chuo Mitsui Trust Holding, Inc., Tokyo, Japan, is revised to read as follows:

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Chuo Mitsui Trust Holdings, Inc.,* Tokyo, Japan; to become a bank holding Company by acquiring The Sumitomo Trust and Banking Co., Ltd, Osaka, Japan, and thereby acquire Sumitomo Trust and Banking Co. (USA), Hoboken, New Jersey.

In connection with this application, Applicant also has applied to acquire Nikko Americas Holding Co., Inc., Nikko Asset Management Americas, Inc., and Chuo Mitsui Investments, all in New York, New York, and thereby engage in investment advisory activities, pursuant to section 225.24(b)(6) of Regulation Y.

Comments on this application must be received by January 18, 2011.

Board of Governors of the Federal Reserve System, December 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–32593 Filed 12–27–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Submission for OMB Review; Comment Request; National Evaluation of the Clinical and Translational Science Awards (CTSA) Initiative

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Research Resources, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 12, 2010, pages 62543–62544, and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection:

Title: The National Evaluation of the Clinical and Translational Science Awards (CTSA) Initiative.

Type of Information Collection Request: New.

Need and Use of Information Collection: The CTSA Initiative is directed at transforming the way biomedical research is conducted nationwide by reducing the time it takes for basic science or laboratory discoveries to become treatments for patients, and for those treatments in turn to be incorporated and disseminated throughout community practice. The primary purpose of this data collection is to provide information about the process and early outcomes associated with 46 awardees participating in the first four cohorts of CTSA awards, in order to fulfill the congressional expectations for external program evaluation. NIH will use the results to understand the extent to which the CTSA Initiative is bringing about transformational changes in clinical and translational science among academic medical centers and their research partners, increasing the efficiency of the research process, and enhancing the capacity of the field to conduct clinical and translational research. All information collected will be used to provide analytical and policy support to NCRR, assisting NIH in making decisions about current CTSA programming, future funding, and other initiatives to improve clinical and translational science. It may also provide information for NIH's Government Performance and Results Act (GPRA) report.

Frequency of Response: Biennial.

Affected Public: Individuals.

Type of Respondents: Scientific researchers. The annual reporting burden is as follows:

Estimated Number of Respondents: 3,563;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: 0.13;

Estimated Total Annual Burden Hours Requested: 451.5. The annualized cost to respondents is estimated at $14,056. There are no capital or start-up costs, and no maintenance or service cost components to report.

Respondent type	Estimated number of respondents	Estimated number of hours per respondent type	Frequency of response	Estimated total annual burden hours requested
Users survey	500	.25	.5	62.5
Nonusers survey	500	.08	.5	20.0
Trainees/scholars survey	1,213	.33	.5	200.0
Mentors survey	1,350	.25	.5	169.0
Total				451.5

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: 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 Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Patricia Newman, Program Analyst, Office of Science Policy, National Center for Research Resources, 6701 Democracy Boulevard, MSC 4874, Bethesda, Maryland 20892–4874, or e-mail your request, including your address to *pnewman@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 20, 2010.

Meryl Sufian,

Supervisory Health Science Policy Analyst, Office of Science Policy, NCRR, National Institutes of Health.

[FR Doc. 2010–32659 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Misconduct in Science; Correction

AGENCY: Office of the Secretary, HHS

ACTION: Correction of notice.

SUMMARY: This document corrects errors that appeared in the notice published in the November 29, **Federal Register** entitled "Findings of Misconduct in Science."

DATES: *Effective Date:* December 28, 2010.

Applicability Date: The correction notice is applicable for the Findings of Misconduct in Science notice published on November 29, 2010.

FOR FURTHER INFORMATION CONTACT: Karen Gorirossi or Sheila Fleming at 240–453–8800.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–29867 of November 29, 2010 (75 FR 73084–73085), there was an error, which included an incorrect date of implementation of administrative actions. The error is identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. 2010–29867 of November 29, 2010 (75 FR 73084–73085), make the following corrections:

1. On page 73084, third column, fourth paragraph, change the paragraph to read as follows: "By letter dated October 4, 2010, the Department of Health and Human Services (HHS) notified Dr. Sezen of findings of misconduct in science made by ORI and the Department's intent to debar her for a period of five (5) years pursuant to the Public Health Service Policies on Research Misconduct, 42 CFR part 50, subpart A and part 93, and HHS' Implementation (2 CFR part 376) of the Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (2 CFR part 180). In accordance with part 93, subpart E, Dr. Sezen was afforded 30 days within which to request a hearing in this matter. As of November 4, 2010, the period of time to request a hearing expired. Thus, the following administrative actions have been implemented for a period of five (5) years, beginning on December 13, 2010."

Dated: December 17, 2010.

John Dahlberg,

Director, Division of Research Investigations, Office of Research Integrity.

[FR Doc. 2010–32555 Filed 12–27–10; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. HHS–OS–2010–0033; OCIIO–9984–N]

The Consumer Operated and Oriented Plan (CO–OP) Advisory Board; Office of Consumer Information and Insurance Oversight, January 13, 2011

AGENCY: Office of Consumer Information and Insurance Oversight (OCIIO), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of an advisory committee of the Office of Consumer Information and Insurance Oversight (OCIIO) in accordance with the Federal Advisory Committee Act. The meeting is open to the public. The purpose of the meeting is to assist and advise the Secretary and Congress through the Department of Health and Human Services' Office of Consumer Information and Insurance Oversight (OCIIO) on the Department's strategy to foster the creation of qualified nonprofit health insurance issuers. Specifically, the Committee shall advise the Secretary and Congress concerning the award of grants and loans related to Section 1322 of the Affordable Care Act. In these matters, the Committee shall consult with all components of the Department, other federal entities, and non-federal organizations, as appropriate; and examine relevant data sources to assess the grant and loan award strategy to provide recommendations to OCIIO. Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

DATES: *Meeting Date:* January 13, 2011 from 8 a.m. to 5 p.m., eastern standard time (e.s.t.).

Deadline for Meeting Registration, Presentations and Comments: January 6, 2011, 5 p.m., *e.s.t.*

Deadline for Requesting Special Accommodations: January 6, 2011, 5 p.m., *e.s.t.*

ADDRESSES: *Meeting Location:* Jurys Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Meeting Online Access: To participate in this meeting via the Internet, go to *http://www.readyshow.com/* and enter participant code 78030350.

Meeting Phone Access: To participate in this meeting via phone, please dial into the toll free phone number 1–877–366–0711, and enter the phone number password 78030350#.

Meeting Registration, Presentations, and Written Comments: Brian Chiglinsky, Office of Consumer Information and Insurance Oversight, HHS, 200 Independence Avenue, SW., Washington, DC 20201, 202–260–6090, Fax: 202–260–6108, or contact by e-mail at *brian.chiglinsky@hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the Analyst at the address listed in the **ADDRESSES** section of this notice or by telephone at number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Brian Chiglinsky, 202–260–6090. Press inquiries are handled through OCIIO's Press Office at (202) 690–6343.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the meeting is to assist and advise the Secretary and Congress through the Department of Health and Human Services' Office of Consumer Information and Insurance Oversight (OCIIO) on the Department's strategy to foster the creation of qualified nonprofit health insurance issuers. Specifically, the Committee shall advise the Secretary and Congress concerning the award of grants and loans related to Section 1322 of the Affordable Care Act. In these matters, the Committee shall consult with all components of the Department, other federal entities, and non-federal organizations, as appropriate; and examine relevant data sources to assess the grant and loan award strategy to provide recommendations to OCIIO.

II. Meeting Agenda

The committee will hear testimony from a number of individuals with experience and expertise in the market for health insurance and nonprofit cooperative health issuers. OCIIO intends to make background material available to the public no later than two (2) business days prior to the meeting. If OCIIO is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on OCIIO's Web site after the meeting, at *http://hhs.gov/ociio.*

Oral comments from the public will be scheduled between approximately 3 p.m. to 4 p.m. Individuals or organizations that wish to make a 3-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Persons attending OCIIO's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public comment session, OCIIO will take written comments after the meeting until close of business. Individuals not wishing to make a presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Individuals requiring sign language interpretation or other special accommodations must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

OCIIO is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.hhs.gov/ociio* for procedures on public conduct during advisory committee meetings.

Dated: December 21, 2010.

Barbara Smith,

Associate Director, Consumer Operated and Oriented Plan Program, Office of Consumer Information and Insurance Oversight.

[FR Doc. 2010–32649 Filed 12–27–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11BI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol Walker, Acting CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

FoodNet Non-O157 Shiga Toxin-Producing E. coli Study: Assessment of Risk Factors for Laboratory-Confirmed Infections and Characterization of Illnesses by Microbiological Characteristics—New—National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year many Shiga toxin-producing *E. coli* (STEC) infections occur in the United States, ranging in severity from mild diarrhea, to hemorrhagic colitis and in some cases, life-threatening hemolytic uremic syndrome (HUS). HUS occurs most frequently following infection with serogroup O157; 6% of patients with this type of STEC infection develop HUS, with highest occurrence in children aged <5 years. HUS has a fatality rate of approximately 5%; up to 25% of HUS survivors are left with chronic kidney damage.

STEC are broadly categorized into two groups by their O antigens, STEC O157 and non-O157 STEC. The serogroup O157 is most frequently isolated and most strongly associated with HUS. Risk factors for STEC O157 infections in the United States and internationally have been intensely studied. Non-O157 STEC are a diverse group that includes all Shiga toxin-producing *E. coli* of serogroups other than O157. Over 50 STEC serogroups are known to have caused human illness. Numerous non-O157 outbreaks have been reported from throughout the world and clinical outcomes in some patients can be as severe as those seen with STEC O157 infections, however, little is known about the specific risk factors for infections due to non-O157 STEC serogroups. More comprehensive understanding of risk factors for sporadic non-O157 STEC infections is needed to inform prevention and control efforts. The FoodNet case-control study will be the first multistate investigation of non-outbreak-associated non-O157 STEC infections in the United States. It will investigate risk factors for non-O157 STEC infections, both as a group and individually for the most common non-O157 STEC serogroups. In addition, the study will characterize the major known virulence factors of non-O157 STEC to assess how risk factors and clinical features vary by virulence factor profiles. As the largest, most comprehensive, and most powerful

study of its kind, it could make an important contribution towards better understanding of non-O157 STEC infections and to providing science-based recommendations for interventions to prevent these infections.

Persons with non-O157 STEC infections who are identified as part of routine public health surveillance and randomly selected healthy persons in the patients' communities (to serve as controls) will be contacted and offered enrollment into this study. Participation is completely voluntary and there is no cost for enrollment.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Patients	161	1	25/60	67
Controls	483	1	25/60	201
Total				268

Dated: December 21, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–32588 Filed 12–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Office of Community Services (OCS) Community Economic Development (CED) and Job Opportunities for Low-Income Individuals (JOLI) Standard Reporting Format.

OMB No.: New Collection.

Description: The Office of Community Services (OCS) is collecting key information about projects funded through the Community Economic Development (CED) and Job Opportunities for Low-Income Individuals (JOLI) programs. The legislative requirement for these two programs is in Title IV of the Community Opportunities, Accountability and Training and Educational Services Act (COATS Human Services Reauthorization Act) of October 27, 1998, Public Law 105–285, section 680(b) as amended. The Performance Progress Report (PPR) is a new proposed reporting format that will collect information concerning the outcomes and management of CED and JOLI projects. OCS will use the data to critically review the overall design and effectiveness of each program.

The PPR will be administered to all active grantees of the CED and JOLI programs. Grantees will be required to use this reporting tool for their semiannual reports. The majority of the questions in this tool were adapted from a previously approved questionnaire, Office of Management and Budget (OMB) Control Number: 0970–0317. Questions were also adapted to the OMB-approved reporting format of the PPR, specifically forms SF–PPR, SF–PPR–A, SF–PPR–B, and SF–PPR–E. Additional changes were made to improve the clarity and quality of the data and to eliminate unnecessary questions. The PPR will replace both the annual questionnaire and the current semi-annual reporting format, which will result in an overall reduction in burden for the grantees while significantly improving the quality of the data collected by OCS.

Respondents: Current CED and JOLI grantees.

TABLE 1—ANNUAL BURDEN ESTIMATE

Instrument	Number of responses	Number of responses per respondent	Average burden hours per response	Total burden hours
PPR Forms for current OCS JOLI grantees	40	2	1.5	120
PPR Forms for current OCS CED grantees	170	2	1.5	510
Estimated Annual Burden Hours				630

Estimated Total Annual Burden Hours: 630.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Dated: December 21, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–32509 Filed 12–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Division of Unaccompanied Children's Services (DUCS) Request for Specific Consent.

OMB No.: New Collection.

Description: The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), Public Law 110–457 was enacted into law December 23, 2008. Section 235(d) directs the Secretary of HHS to grant or deny requests for specific consent for unaccompanied alien children in HHS custody who seek to invoke the jurisdiction of a state court for a dependency order and who also seek to invoke the jurisdiction of a state court to determine or alter his or her custody status or release from ORR. These requests can be extremely time sensitive since a child must ask a state court for dependency before turning 18 years old.

In developing procedures for collecting the necessary information from unaccompanied alien children, their attorneys, or other representatives to allow HHS to approve or deny consent requests, ORR/DUCS devised a form. Specifically, the form asks the requestor for his/her identifying information, basic identifying information on the unaccompanied alien child, the name of the HHS-funded facility where the child is in HHS custody and care, the name of the court and its location, and the kind of request (*e.g.,* for a change in custody, etc.). The form also asks that the unaccompanied alien child's attorney or authorized representative attach a Notice of Representation, which is an approved federal government agency form used for immigration procedures that authorizes the attorney to act on behalf of the child (*i.e.,* G–28, EOIR–28, EOIR–29), or any other form of authorization to act on behalf of the unaccompanied alien child.

Respondents: Attorneys, accredited legal representatives, or others authorized to act on behalf of a unaccompanied alien child.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for Specific Consent to Juvenile Court Jurisdiction (ORR–0132)	72	1	0.3333	24

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–32504 Filed 12–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Notice of Interstate Lien.

OMB No.: 0970–0153.

Description: Section 452(a)(11) of the Social Security Act requires the Secretary of Health and Human Services to promulgate a form for imposition of liens to be used by the State child support enforcement (Title IV–D) agencies in interstate cases. Section 454(9)(E) of the Social Security Act requires each State to cooperate with any other State in using the Federal form for imposition of liens in interstate child support cases. Tribal IV–D agencies are not required to use this form but may choose to do so. OMB approval of this form is expiring in February 2011 and the Administration for Children and Families is requesting an extension of this form.

Respondents: State, local or Tribal agencies administering a child support enforcement program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondents	Average burden hours per responses	Total burden hours
Notice of Lien	1,832,384	1	0.25	458,096

Estimated Total Annual Burden Hours: 458,096.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project. Fax: 202–395–7285. *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV. Attn:* Desk Officer for the Administration for Children and Families.

Dated: December 22, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–32592 Filed 12–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0198]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Notification" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, e-mail: *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 2010 (75 FR 48696), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0120. The approval expires on December 31, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: December 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–32508 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0447]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Third Party Review Program Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by January 27, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0375. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, e-mail: *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third Party Review Program Under the Food and Drug Administration Modernization Act—(OMB Control Number 0910–0375)—Extension

Section 210 of the Food and Drug Administration Modernization Act (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket notifications (510(k)s). Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) of the FD&C Act (21 U.S.C. 360) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years.

This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low- to moderate-risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

I. Reporting

510(k) Reviews Conducted by Accredited Third Parties

According to FDA's data in 2009, the Agency has experienced that the number of 510(k)s submitted for third-party review is approximately 260 annually, which is 26 annual reviews per each of the 10 accredited reviewers.

II. Recordkeeping

Third party reviewers are required to keep records of their review of each submission. According to FDA's in 2009, the Agency anticipates approximately 260 submissions of 510(k)s for third-party review per year.

In the **Federal Register** of September 22, 2010 (75 FR 57801), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment; however, it was not PRA related.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section 523 of the FD&C Act	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Requests for accreditation	1	1	1	24	24
510(k) reviews conducted by accredited third parties	10	26	260	40	10,400
Total					10,424

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Section 523 of the FD&C Act	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
510(k) reviews	10	26	260	10	2,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–32603 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0326]

Determination That TRANDATE (Labetalol Hydrochloride) Tablets, 300 Milligrams and 400 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that TRANDATE (labetalol hydrochloride) tablets, 300 milligrams (mg) and 400 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as the ANDAs meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Deborah Livornese, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6306, Silver Spring, MD 20993–0002, 301–796–0719.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug. Under § 314.161(a)(2), FDA must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

TRANDATE (labetalol hydrochloride) tablets, 300 mg and 400 mg, are the subject of NDA 18–716, held by Prometheus Laboratories, Inc., and initially approved on August 1, 1984. TRANDATE is indicated for the management of hypertension. TRANDATE (labetalol hydrochloride) tablets, 300 mg and 400 mg, are currently listed in the "Discontinued Drug Product List" section of the Orange Book. TRANDATE (labetalol hydrochloride) tablets, 400 mg, have never been marketed. In previous instances (*see, e.g.,* 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

JRRapoza Associates, Inc., submitted a citizen petition dated June 16, 2010 (Docket No. FDA–2010–P–0326), under 21 CFR 10.30, requesting that the Agency determine whether TRANDATE (labetalol hydrochloride) tablets, 300 mg, were withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 400 mg strength, on our own initiative, we have also determined whether that strength was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that

TRANDATE (labetalol hydrochloride) tablets, 300 mg and 400 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TRANDATE (labetalol hydrochloride) tablets, 300 mg and 400 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TRANDATE (labetalol hydrochloride) tablets, 300 mg and 400 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TRANDATE (labetalol hydrochloride) tablets, 300 mg and 400 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to the TRANDATE products listed in this document. Additional ANDAs that refer to these products may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–32507 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 10, 2011, from 8 a.m. to 4:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading "Resources for You", click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings". Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *kalyani.bhatt@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 10, 2011, the committee will: (1) Receive updates regarding neurodegenerative findings (findings related to degeneration in the nervous system) in juvenile animals exposed to anesthetic drugs, as well as results from human epidemiological studies using anesthesia in children (information related to studies of patterns and causes of disease); (2) discuss the relevance of these findings to pediatric patients and provide guidance for future preclinical and clinical studies; and (3) discuss the potential implications of these data upon the practice of pediatric anesthesia as well as the communication of the risk of sedative/anesthetic agents to prescribers and parents.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 24, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 15, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 16, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–32591 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Request for Notification From Consumer Organizations Interested in Participating in the Selection Process for Nominations for Voting and/or Nonvoting Consumer Representatives on Public Advisory Committees or Panels and Request for Nominations for Voting and/or Nonvoting Consumer Representatives on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may either be self-nominated or may be nominated by a consumer organization. Nominations will be accepted for current vacancies and for those that will or may occur through December 2011.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or e-mail stating that interest to FDA (*see* **ADDRESSES**) by January 27, 2011, for vacancies listed in this document. Concurrently, nomination materials for prospective candidates should be sent to FDA (*see* **ADDRESSES**) by January 27, 2011.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process and consumer representative nominations should be sent electronically to *CV@OC.FDA.GOV,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, rm. 5129, Silver Spring, MD 20993–0002, or by FAX to 301–847–8640. Information about becoming a member of an FDA advisory committee can be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER GENERAL INFORMATION CONTACT: Doreen Brandes, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5122, Silver Spring, MD 20993–0002, 301–796–8858, e-mail: *Doreen.Brandes@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the following persons listed in table 1 of this document:

TABLE 1

Contact person	Committee/panel
Walter Ellenberg, 10903 New Hampshire Ave., Bldg. 32, rm. 5488, Silver Spring, MD 20993–0002; phone: 301–796–3873; e-mail: *Walter.Ellenberg@fda.hhs.gov*.	Pediatrics Advisory Committee.
Martha Monser, 10903 New Hampshire Ave., Bldg. 32, rm. 4286, Silver Spring, MD 20993–0002; phone: 301–796–4627; e-mail: *Martha.Monser@fda.hhs.gov*.	Science Board.
Yvette Waples (Acting), 10903 New Hampshire Ave., Bldg. 31, rm. 2410, Silver Spring, MD 20993–0002; phone: 301–796–9034; e-mail: *Yvette.Waples@fda.hhs.gov*.	Advisory Committee for Pharmaceutical Science and Clinical Pharmacology Dermatologic, Ophthalmic Drugs and Psychopharmacologic Drugs.
Minh Doan, 10903 New Hampshire Ave., Bldg. 31, rm. 2432, Silver Spring, MD 20993–0002; phone: 301–796–9009; e-mail: *Minh.Doan@fda.hhs.gov*.	Arthritis Drugs.
Kalyani Bhatt, 10903 New Hampshire Ave., Bldg. 31, rm. 3438, Silver Spring, MD 20993–0002; phone: 301–796–9005; e-mail: *Kalyani.Bhatt@fda.hhs.gov*.	Anesthetic & Life Support Drugs.
Paul Tran, 10903 New Hampshire Ave., Bldg. 31, rm. 2404, Silver Spring, MD 20993–0002; phone: 301–796–9029; e-mail: *Paul.Tran@fda.hhs.gov*.	Anti-Viral Drugs
Caleb Briggs, 10903 New Hampshire Ave., Bldg. 31, rm. 2428, Silver Spring, MD 20993–0002; phone: 301–796–9022; e-mail: *Caleb.Briggs@fda.hhs.gov*.	Oncologic Drugs.
Bryan Emery, Rockwall Building (HFM–71), 5515 Security Lane, rm. 1312, Rockville, MD 20852; phone: 301–827–1277; e-mail: *Bryan.Emery@fda.hhs.gov*.	Blood Products and Transmissible Spongiform Encephalopathies
Margaret Miller, 10903 New Hampshire Ave., Bldg. 32, rm. 2208, Silver Spring, MD 20993–0002; phone: 301–796–8890; e-mail: *Margaret.Miller@fda.hhs.gov*.	Science Advisory Board to the National Center of Toxicological Research.
Shanika Craig, 10903 New Hampshire Ave., Bldg. 66, rm. 1613, Silver Spring, MD 20993–0002; phone: 301–796–6639; e-mail: *Shanika.Craig@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel and General Hospital and Personal Use Devices Panel.
Margaret McCabe-Janicki, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993–0002; phone: 301–796–7029; e-mail: *Margaret.Mccabe-Janicki@fda.hhs.gov*.	Gastroenterology and Urology General Plastic Surgery.
Olga Claudio, 10903 New Hampshire Ave., Bldg. 66, rm. 1611, Silver Spring, MD 20993–0002; phone: 301–796–7608; e-mail: *Olga.Claudio@fda.hhs.gov*.	Immunology Devices Panel, Dental Products Devices Panel and National Mammography Quality Assurance Advisory Committee.
James Swink, 10903 New Hampshire Ave., Bldg. 66, rm. 1609, Silver Spring, MD 20993–0002; phone: 301–796–6313; e-mail: *James.Swink@fda.hhs.gov*.	Molecular and Clinical Genetics.
James Engles, 10903 New Hampshire Ave., Bldg. 66, rm. 1566, Silver Spring, MD 20993–0002; phone: 301–796–7543; e-mail: *James.Engles@fda.hhs.gov*.	Neurological Devices Panel and Ophthalmic Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2 of this document:

TABLE 2

Committee/panel/areas of expertise needed	Current and upcoming vacancies	Approximate date needed
Pediatrics Advisory Committee: Knowledgeable in pediatric research, pediatric subspecialties, statistics, and/or biomedical ethics.	1-Voting	immediately.

TABLE 2—Continued

Committee/panel/areas of expertise needed	Current and upcoming vacancies	Approximate date needed
Science Board: Knowledgeable in the fields of food safety, nutrition, chemistry, pharmacology, toxicology, clinical research of systems biology, healthcare devices, nanotechnology, medical imaging, robotics, cell and tissue based products, regenerative medicine and combination products.	1-Voting	immediately.
Blood Products: Knowledgeable in the fields of clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, biological and physical sciences, biotechnology, computer technology, statistics, epidemiology, sociology/ethics, and other related professions.	1-Voting	immediately.
Transmissible Spongiform Encephalopathies: Knowledgeable in the fields of clinical and administrative medicine, hematology, virology, neurovirology, neurology, infectious diseases, immunology, transfusion medicine, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.	1-Voting	immediately.
Anesthetic and Life Support: Knowledgeable in the fields of anesthesiology, surgery, epidemiology or statistics, and related specialties.	1-Voting	04/01/11.
Antiviral Drugs: Knowledgeable in the fields of clinical pharmacology, internal medicine, infectious diseases, microbiology, virology, psychiatry, statistics, epidemiology, ophthalmology, immunology, pediatrics, hematology, and related specialties.	1-Voting	11/01/11.
Arthritis Drugs: Knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties.	1-Voting	immediately.
Dermatologic and Ophthalmic Drugs: Knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions.	1-Voting	09/01/11.
Oncologic Drugs: Knowledgeable in the fields of general oncology, pediatric oncology, hematologic oncology, immunologic oncology, biostatistics, and other related professions.	1-Voting	07/01/11.
Pharmaceutical Science and Clinical Pharmacology: Knowledgeable in the fields of pharmaceutical manufacturing, clinical pharmacology, pharmacokinetics, bioavailability and bioequivalence research, the design and evaluation of clinical trials, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, biostatistics and related biomedical and pharmacological specialties.	1-Voting	11/01/11.
Psychopharmacologic Drugs: Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1-Voting	07/30/11.
Veterinary Advisory: Knowledgeable in the fields of companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, chemistry, public health/epidemiology and minor species/minor use veterinary medicine.	1-Voting	immediately.
Science Board to the National Center for Toxicology: Knowledgeable in the fields related to toxicological research.	1-Voting	immediately.
National Mammography Quality Assurance Advisory Committee: Knowledgeable in clinical practice, research specialization, or professional work that has a significant focus on mammography.	2-Voting	Immediately.
Certain Panels of the Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices: Knowledgeable in anesthesiology and pulmonary medicine or others who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1-Nonvoting	12/01/10.
Dental Products Panel: Knowledgeable in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1-Nonvoting	immediately.
Gastroenterology and Urology Devices: Knowledgeable in the area of gastroenterology, urology, and nephrology.	1-Nonvoting	01/01/12.
General Hospital and Personal Use Devices: Nurses, biomedical engineers, microbiologists/infection control practitioners, or experts knowledgeable in the area of hospital and personal use devices.	1-Nonvoting	01/01/11.
Immunology Devices: Knowledgeable in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1-Nonvoting	immediately.

TABLE 2—Continued

Committee/panel/areas of expertise needed	Current and upcoming vacancies	Approximate date needed
Molecular and Clinical Genetics Panel: Knowledgeable in human genetics and in the clinical management of patients with genetic disorders, e.g., candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics as well as ancillary fields of study will be considered.	1-Nonvoting	immediately.
Neurological Devices: Knowledgeable in neurologic diseases and devices used to treat neurologic disorders.	1-Nonvoting	immediately.
Ophthalmic Devices: Knowledgeable in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; ophthalmic professionals quality of life assessment, electrophysiology, low vision rehabilitation.	1-Nonvoting	immediately.

I. Functions

A. Pediatric Advisory Committee

Advises and makes recommendations regarding (1) Pediatric research; (2) identification of research priorities related to pediatric therapeutics and the need for additional treatments of specific pediatric diseases or conditions; (3) the ethics, design, and analysis of clinical trials related to pediatric therapeutics; (4) pediatric labeling disputes; (5) pediatric labeling changes; (6) adverse event reports for drugs granted pediatric exclusivity and any safety issues that may occur; (7) any other pediatric issue or pediatric labeling dispute involving FDA regulated products; (8) research involving children as subjects; and (9) any other matter involving pediatrics for which FDA has regulatory responsibility.

B. Science Board

Provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues in the scientific community, industry, and academia. Additionally, the Board will provide advice to the Agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of Agency sponsored intramural and extramural scientific research programs.

C. Blood Products

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases as well as the safety, effectiveness, and labeling of the products, on clinical and laboratory studies involving such products, on the affirmation or revocation of biological product licenses, and on the quality and relevance of FDA's research program which provides the scientific support for regulating these products.

D. Transmissible Spongiform Encephalopathies

Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health, as well as considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

E. Anesthetic and Life Support Drugs

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

F. Antiviral Drugs

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

G. Arthritis Drugs

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

H. Oncologic Drugs

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cancer.

I. Pharmaceutical Science & Clinical Pharmacology

Provides advice on scientific and technical issues concerning the safety, and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases, and as required, any other product for which the FDA has regulatory responsibility. The committee may also review Agency sponsored intramural and extramural biomedical research programs in support of FDA's generic drug regulatory responsibilities.

J. Psychopharmacologic Drugs

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

K. Veterinary Medicine

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

L. Technical Electronic Product Radiation Standards Advisory Committee

Reviews and evaluates the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards.

M. Science Advisory Board to the National Center for Toxicological Research

Reviews and advises the Agency on the establishment, implementation, and evaluation of the research programs that meet current and future scientific needs of the Agency. The Board also provides

an extra-agency review in ensuring that the research programs at NCTR are scientifically sound and relevant to the regulatory needs of the Agency.

N. National Mammography Quality Assurance Advisory Committee

Advises the Agency on development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; and establishing a mechanism to investigate consumer complaints; reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities. Also determines whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determines the effects of personnel on access to the services of such facilities in such areas; determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

O. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices. The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

II. Criteria for Members

Persons nominated for membership as consumer representatives on the committees or panels should meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (*see* **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing three to five qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or resume. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

All nominations should include: A cover letter; a curriculum vitae or resume that includes the nominee's home or office address, telephone number, and e-mail address; and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations also should specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations should include confirmation that the nominee is aware of the nomination and is willing to serve as a member of the advisory committee or panel if selected. The term of office is up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of three to five qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

FDA has a special interest in ensuring that women, minority groups, and individuals with physical disabilities are adequately represented on its advisory committees and panels and, therefore, encourages nominations for appropriately qualified candidates from these groups.

Dated: December 22, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–32624 Filed 12–27–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—Revision

This is a request for revision of the Nursing Education Loan Repayment Program (NELRP) application and participant monitoring forms. The NELRP is authorized by 42 U.S.C. 297n(a) (section 846(a) of the Public Health Service Act, as amended by Public Law 107–205, August 1, 2002 and Public Law 111–148, March 23, 2010).

Under the NELRP, registered nurses and nurse faculty are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying educational loan balance as follows: 30 percent each year for the first 2 years and 25 percent for the optional third year. In exchange, the nurses agree to serve full-time for a minimum of 2 years as a registered nurse at a health care facility with a critical shortage of nurses or as nurse faculty at an eligible school of nursing. The NELRP forms provide information that is needed for selecting participants, repaying qualifying loans for education, and monitoring compliance with service requirements. The NELRP forms include the following: The NELRP Application, the Loan Information and Verification form, the Employment Verification and Critical Shortage Facility form, the Employment Verification for Nurse Faculty Appointment, the Authorization for Release of Employment Information form, the Authorization to Release Information form, the Certification Regarding Debarment, Suspension, Disqualification and Related Matters form, the Certification of Accreditation Status for School of Nursing Education Programs form, the NELRP Application Checklist and Self-Certification form, the Verification of Acceptance or Decline of Award form and the Participant Semi-Annual Employment Verification form.

The estimates of reporting burden for Applicants are as follows:

Instrument	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total burden hours
NELRP Application	8,000	1	8,000	1.5	12,000
Loan Information and Verification Form	8,000	3	24,000	1	24,000
Employment Verification and Critical Shortage Facility Form	7,500	1	7,500	.50	3,750
Employment Verification for Nurse Faculty Appointment Form	500	1	500	.25	125
Authorization for Release of Employment Information Form	8,000	1	8,000	.10	800
Authorization to Release Information Form	8,000	1	8,000	.10	800
Certification Regarding Debarment, Suspension, Disqualification and Related Matters Form	8,000	1	8,000	.10	800
Certification Of Accreditation Status for School of Nursing Education Programs Form	500	1	500	.10	50
Application Checklist and Self-Certification Form	8,000	1	8,000	.50	4,000
The Verification of Acceptance or Decline of Award form	1,200	1	1,200	.25	300
Total			73,700		46,625

The annual estimate of burden for Participants is as follows:

Participant Semi-Annual Employment Verification Form	2,300	2	4,600	.5	2,300
Total	2,300	2	4,600	.5	2,300

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the OMB desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the OMB desk officer for HRSA."

Dated: December 21, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–32561 Filed 12–27–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program Application (OMB No. 0915–0146)—[Revision]

The National Health Service Corps (NHSC) Scholarship Program provides the NHSC with the health professionals it requires to carry out its mission of providing primary health care to populations residing in areas of greatest need. Under this program, health professions students are awarded scholarships in return for service in a federally designated Health Professional Shortage Area (HPSA). Students are supported who are well qualified to participate in the NHSC Scholarship Program and who want to assist the NHSC in its mission, both during and after their period of obligated service. The NHSC Scholarship Program forms are used to collect relevant information necessary to make award determinations. Scholars are selected for these competitive awards based on the information provided in the application, forms, and supporting documentation. Awards are made to applicants who demonstrate a high potential for providing quality primary health care services in HPSAs. The program forms include the following: The NHSC Scholarship Program Application, Academic and Non-Academic Evaluation Letters (formerly Letters of Recommendation), the Authorization to Release Information, the Verification of Acceptance/Good Standing Report, the Receipt of Exceptional Financial Need Scholarship, the Verification Regarding Disadvantaged Background and the Acceptance/Declination Form. Also included are the Data Collection Worksheet, which is completed by the schools of program participants, the Deferment Request Form, which is completed by program participants and the Six-Month Service Obligation Verification Form, which is completed by program participants and their sites.

The annual estimate of burden for applicants is as follows:

Instrument	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total burden hours
NHSC Scholarship Program Application	1,800	1	1,800	2.0	3,600
Evaluation Letters	1,800	2	3,600	.50	1,800
Authorization to Release Information	1,800	1	1,800	.10	180
Verification of Acceptance/Good Standing Report	1,800	1	1,800	.25	450
Receipt of Exceptional Financial Need Scholarship	100	1	100	.25	25
Verification Regarding Disadvantaged Background	300	1	300	.25	75
Acceptance/Declination Form	250	1	250	.10	25
Total			9,400		6,155

The annual estimate of burden for participants/schools/sites is as follows:

Instrument	Number of respondents	Responses/ respondent	Total responses	Hours per response	Total burden hours
Data Collection Worksheet	400	1	400	1.0	400
Deferment Request Form	60	1	60	.25	15
Six-Month Service Obligation Verification Form	700	2	1,400	.50	700
Total			1,860		1,115

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the OMB desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the OMB desk officer for HRSA."

Dated: December 21, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–32562 Filed 12–27–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: January 27, 2011, 8:30 a.m. to 5 p.m., EST. January 28, 2011, 8:30 a.m. to 4 p.m., EST.

Place: Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. Telephone: 301–468–1100.

Status: The meeting will be open to the public.

Purpose: The members of the ACICBL will advance the planning required to develop their 11th Annual Report for the Secretary of the Department of Health and Human Services (the Secretary) and Congress, using the working topic, Continuing Education, Professional Development and Lifelong Learning for the 21st Century Health Care Workforce. The meeting will provide the planning and writing sub-committees with the opportunity to review the urgent issues related to the

training programs, identify resources that will address the gaps and further strengthen the outcomes from these efforts, examine testimony from the experts in the field, and offer recommendations for improvement of these training programs to the Secretary and the Congress.

Agenda: The ACICBL agenda includes an overview of the Committee's general business activities, an orientation for the eight newly appointed members, presentations by and dialogue with experts, and discussion sessions specific to the development of recommendations to be addressed in the 11th Annual ACICBL Report. Agenda items are subject to change as dictated by the priorities of the Committee.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the ACICBL should be sent to Dr. Joan Weiss, Designated Federal Official at the contact information below. Individuals who plan to attend the meeting and need special assistance should notify Dr. Weiss at least 10 days prior to the meeting, using the address and phone number below. Members of the public will have the opportunity to provide comments at the meeting.

FOR FURTHER INFORMATION CONTACT: Anyone requesting additional details should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Professions, Health Resources and Services Administration. Dr. Weiss may be reached by one of the three following methods: (1) Via written request to: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857; (2) via telephone at (301) 443–6950; or (3) via e-mail at *jweiss@hrsa.gov.* In the absence of Dr. Weiss, CAPT Norma J. Hatot, Senior Nurse Consultant, may be contacted via telephone at (301) 443–2681 or by e-mail at *nhatot@hrsa.gov.*

Dated: December 21, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–32560 Filed 12–27–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Hesperetin Therapy for Metabolic Syndrome and Insulin Resistance

Description of Technology: Hesperidin is a flavonoid compound found in citrus fruits. Large epidemiological studies have linked increased consumption of flavonoid-rich foods, such as citrus, with reduced cardiovascular morbidity and mortality. Investigators from the National Center for Complementary and Alternative Medicine have demonstrated that administration of oral hesperidin to patients with metabolic syndrome attenuates biomarkers of inflammation and improves blood vessel relaxation, lipid cholesterol profiles, and insulin sensitivity when compared to controls. Thus, hesperidin and its active aglycone form, hesperetin, may be effective agents for the treatment of diabetes, obesity, metabolic syndrome, dyslipidemias, and their cardiovascular complications including hypertension, atherosclerosis, coronary heart disease, and stroke. This technology discloses methods for using a hesperetin composition to treat metabolic syndrome and insulin resistance.

Applications: Therapeutics for metabolic syndrome and insulin resistance.

Development Status: Clinical trial data available.

Inventors: Michael J. Quon and Ranganath Muniyappa (NCCAM).

Publications: Manuscript in preparation.

Patent Status: U.S. Provisional Application No. 61/369,229 filed 30 July 2010 (HHS Reference No. E–148–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Tara L. Kirby, Ph.D.; 301–435–4426; *kirbyt@mail.nih.gov.*

Substituted Triazine and Purine Compounds for the Treatment of Chagas Disease and African Trypanosomiasis

Description of Technology: Parasitic protozoa are responsible for a wide variety of infections in both humans and animals. Trypanosomiasis poses health risks to millions of people across multiple countries in Africa and North and South America. Visitors to these regions, such as business travelers and tourists, are also at risk for contracting parasitic diseases. There are two types of African trypanosomiasis, also known as sleeping sickness. One type is caused by the parasite *Trypanosoma brucei gambiense,* and the other is caused by the parasite *Trypanosoma brucei rhodesiensi.* If left untreated, African sleeping sickness results in death. Chagas disease, caused by *Trypanosoma cruzi* (*T. cruzi*), affects millions of people in Mexico and South and Central America. Untreated, Chagas disease causes decreased life expectancy and can also result in death.

The subject invention covers novel triazine and purine compounds that are inhibitors of key proteases (cruzain and Rhodesian) of the parasites *Trypanosoma brucei rhodesiensi* and *Trypanosoma cruzi,* respectively.

Applications: Prophylactic and therapeutic treatment of African trypanosomiasis and Chagas disease.

Advantages

- Novel compounds against the cysteine proteases, cruzain and rhodesain.
- Compounds possess low nanomolar inhibitory potential against cruzain and rhodesain.

Development Status: In vitro and *in vivo* data are available upon request and upon execution of an appropriate confidentiality agreement.

Inventors: Craig J. Thomas *et al.* (NHGRI).

Related Publication: BT Mott et al. Identification and optimization of inhibitors of Trypanosomal cysteine

proteases: cruzain, rhodesain, and TbCatB. J Med Chem. 2010 Jan 14;53(1):52–60. [PubMed: 19908842]

Patent Status: PCT Application No. PCT/US2009/063078 filed 03 Nov 2009, which published as WO 2010/059418 on 27 May 2010 (HHS Reference No. E–267–2008/0–PCT–02)

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

Collaborative Research Opportunity: The NIH Chemical Genomics Center (NCGC) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize appropriate lead compounds described in the patent application. Please contact Dr. Craig J. Thomas (*craigt@nhgri.nih.gov*) or Claire Driscoll (*cdriscol@mail.nih.gov*), Director of the NHGRI Technology Transfer Office, for more information.

A Novel, Inhibitory Platelet Surface Protein (TREM Like Transcript, TLT–1): New Target for the Treatment of Cancer, Infectious Diseases, Cardiac Diseases, and Platelet-Associated Disorders

Description of Technology: Triggering Receptors in Myeloid Cells (TREM) recently were discovered to modulate innate and adaptive immunity. Specifically, TREM1 amplifies the response to sepsis in innate immunity by activating neutrophils and other leukocytes; and TREM2 potentiates dendritic cell maturation in adaptive immunity.

This invention describes a novel, inhibitory platelet surface protein known as TREM like Transcript (TLT–1). TLT–1 is the first inhibitory receptor discovered to reside within the TREM gene locus. Structurally, TLT–1 also possesses inhibitory domains that indicate this regulatory function. TLT–1 is highly expressed in peripheral blood platelets and may modulate many other types of myeloid cells. Additionally, the invention describes specific, human, single chain antibodies (scFvs) that recognize TLT–1.

Applications

• This discovery implies the receptor has an important regulatory role in both innate and adaptive immunity.

• TLT–1 is a potential therapeutic target for thrombosis and other platelet-associated disorders, as well as immune disorders, cancer, septic shock, infectious disease, stroke, heart disease, myocardial infarction, vascular disorders.

• Detection of soluble TLT–1 in patient plasma suggests the protein is a marker of ongoing coagulopathies.

• Defective platelet aggregation in TLT–1 null mice confirms a role for the protein in regulation of thrombosis associated with inflammation.

Advantages

• *In vitro* proof of concept data available—Three of the anti-TLT–1 scFvs inhibit thrombin-induced aggregation of human platelets in a dose-dependent manner.

• Complete human origin of these antibodies suggests negligible immunogenicity and minimizes the problem of adverse immune responses in human therapy.

• Target validation is complete. TLT–1 null mice demonstrate defects in platelet aggregation with no gross bleeding defect.

Development Status: In vitro experiments completed. Target validation with null mice completed. *In vivo* animal studies with scFv are currently ongoing.

Inventors: Toshiyuki Mori *et al.* (NCI)

Related Publication: Giomarelli B, Washington VA, Chisholm MM, Quigley L, McMahon JB, Mori T, McVicar DW. Inhibition of thrombin-induced platelet aggregation using human single-chain Fv antibodies specific for TREM-like transcript-1. Thromb Haemost. 2007 Jun;97(6):955–963. [PubMed: 17549298]

Patent Status: U.S. Patent No. 7,553,936 issued on 30 Jun 2009 (HHS Reference No. E–177–2006/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, PhD; 301–594–6565; *tongb@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute's Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize antibodies that react specifically with TLT–1. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: December 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–32629 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Engineered Biological Pacemakers

Description of Technology: A common symptom of many heart diseases is an abnormal heart rhythm or arrhythmia. While effectively improving the lives of many patients, implantable pacemakers have significant limitations such as limited power sources, risk of infections, potential for interference from other devices, and absence of autonomic rate modulation.

The technology consists of biological pacemakers engineered to generate normal heart rhythm. The biological pacemakers include cardiac cells or cardiac-like cells derived from embryonic stem cells or mesenchymal stem cells. The biological pacemakers naturally integrate into the heart. Their generation of rhythmic electric impulses involves coupling factors, such as cAMP-dependent PKA and Ca^{2+} -dependent CaMK II, which are regulatory proteins capable of modulating/enhancing interactions (*i.e.* coupling) of the sarcoplasmic reticulum-based, intracellular Ca^{2+} clock and the surface membrane voltage clock, thereby converting irregularly or rarely spontaneously active cells into pacemakers generating rhythmic excitations.

Applications: This technology can be utilized in heart disease characterized by arrhythmia or situations requiring an implantable cardiac pacemaker.

Advantages: In contrast to current implantable cardiac pacemaker technology, this technology is not externally powered, has a lower risk of infection, has decreased potential for interference from other devices, and has full autonomic rate modulation.

Development Status: Early stage.

Inventors: Victor A. Maltsev *et al.* (NIA)

Publications:

1. VA Maltsev and EG Lakatta. Synergism of coupled subsarcolemmal Ca^{2+} clocks and sarcolemmal voltage clocks confers robust and flexible pacemaker function in a novel pacemaker cell model. Am J Physiol Heart Circ Physiol. 2009 Mar;296(3):H594–H615. [PubMed: 19136600]

2. VA Maltsev and EG Lakatta. Dynamic interactions of an intracellular Ca^{2+} clock and membrane ion channel clock underlie robust initiation and regulation of cardiac pacemaker function. Cardiovasc Res. 2008 Jan 15;77(2):274–284. [PubMed: 18006441]

Patent Status: PCT Application No. PCT/US2010/035823 filed 21 May 2010 (HHS Reference No. E–134–2009/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Collaborative Research Opportunity: The National Institute on Aging, Cellular Biophysics Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Vio Conley at 301–496–0477 or *conleyv@mail.nih.gov* for more information.

Method of Detecting and Quantifying Contaminants in Heparin Preparations

Description of Technology: Heparin is a naturally occurring acidic carbohydrate produced commercially from extracts of animal tissues (such as bovine lung or porcine intestine) and is used in the treatment of a wide range of diseases in addition to their classic anticoagulant activity. Heparin is also used to coat many medical devices, such as catheters, syringes, stents and filters. Recently, certain lots of heparin were associated with serious side effects and adverse events. Recalls were issued in multiple countries and it became evident that there was an extensive problem with heparin manufacture.

Traditional tests may not be able to determine the presence of contaminant(s) without lyophilizing and concentrating each sample and may not be suitable for testing finished medical devices. Therefore, there is a demonstrated need to develop other assay methods for detecting contaminating oversulfated compounds of any source in heparin and heparin derived products.

This technology relates to methods for detecting and/or quantifying oversulfated glycosaminoglycans based on inhibition of nucleic acid polymerases and resistance to enzymatic degradation. It also relates to the use of these methods to screen and quantify pharmaceutical preparations such as heparin preparations for oversulfated contaminants.

Potential Applications: Robust, simple and effective method for detecting and optionally quantifying oversulfated contaminants in heparin preparations.

Development Status: The method has been developed and qualified for sensitivity and identity, but full validation and commercialization have not been undertaken.

Inventor: Daniela Verthelyi *et al.* (FDA)

Publication: C Tami, M Puig, JC Reepmeyer, H Ye, DA D'Avignon, L Buhse, D Verthelyi. Inhibition of Taq polymerase as a method for screening heparin for oversulfated contaminants. Biomaterials 2008 Dec;29(36):4808–4814. [PubMed: 18801571]

Patent Status: PCT Application No. PCT/US2009/056263 filed 08 Sep 2009, which published as WO 2010/030608 on 18 Mar 2010 (HHS Reference No. E–227–2008/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Collaborative Research Opportunity: The FDA, Division of Therapeutic Proteins, Laboratory of Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this high throughput screening test for oversulfated glycosamineglycan contaminants in heparin. Please contact Daniela Verthelyi at *daniela.verthelyi@fda.hhs.gov* or Alice Welch at *alice.welch@fda.hhs.gov* for more information.

Method for the Diagnosis and Prognosis of Age-Related Cardiovascular Disorders

Description of Technology: NIH investigators have discovered a method for the diagnosis and prognosis of cardiovascular aging. Current methodologies include the measurement of patient lipid profiles or expression of up to two proteins. In contrast, this technology utilizes the expression levels of a panel of proteins not previously known to be related to cardiovascular aging and may prove to be a more accurate diagnostic or prognostic of cardiovascular aging than currently available tests or it may improve the accuracy of currently available tests when used in concert.

The technology relates to methods for determining susceptibility to having an extremely common age-associated vascular disorder. It also describes the subsequent use of these proteins as markers for disease. While the underlying cellular and molecular mechanisms of age-related vascular disease remain largely undefined, the expression levels of the genes described in this technology have been empirically determined to differ between healthy and age-inflamed arterial tissue. Further, this technology includes a companion mass spectroscopic-based methodology for reproducible quantification of specific expression levels of interest.

Application: Diagnosis of age-related vascular disorder.

Development Status: Early stage.

Inventors: Mingyi Wang *et al.* (NIA).

Patent Status: PCT Application No. PCT/US2010/024816 filed 19 Feb 2010, which published as WO 2010/096713 on 26 Aug 2010 (HHS Reference No. E–219–2008/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, MHPM; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Collaborative Research Opportunity: The National Institute on Aging, Cardiovascular Biology Unit—Vascular Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize idea of how to assess and retard accelerated arterial aging and its attendant risks for atherosclerosis and hypertension. Please contact Vio Conley at 301–496–0477 or *conleyv@mail.nih.gov* for more information.

Identification of Subjects Likely To Benefit From Copper Treatment

Description of Technology: Menkes disease is an infantile onset X-linked recessive neurodegenerative disorder caused by deficiency or dysfunction of a copper-transporting ATPase, ATP7A. The clinical and pathologic features of this condition reflect decreased activities of enzymes that require copper as a cofactor, including dopamine-β-hydrolase, cytochrome c oxidase and lysyl oxidase. Recent studies indicate that ATP7A normally responds to N-methyl-D-aspartate receptor activation in the brain, and an impaired response probably contributes to the neuropathology of Menkes disease. Affected infants appear healthy at birth and develop normally for 6 to 8 weeks. Subsequently, hypotonia, seizures and failure to thrive occur and death by 3 years of age is typical. Occipital horn syndrome (OHS) is also caused by mutations in the copper transporting ATPase ATP7A, although its symptoms are milder than Menkes syndrome, including occipital horns and lax skin and joints.

Treatment with daily copper injections may improve the outcome in Menkes disease if commenced within days after birth; however, newborn screening for this disorder is not available and early detection is difficult because clinical abnormalities in affected newborns are absent or subtle. Moreover, the usual biochemical markers (low serum copper and ceruloplasmin) are unreliable predictors in the neonatal period, since levels in healthy newborns are low and overlap with those in infants with Menkes disease. Although molecular diagnosis is available, its use is complicated by the diversity of mutation types and the large size of ATP7A (about 140kb). Thus, there is a need for improved methods for early detection of infants with Menkes disease or OHS in order to improve outcomes.

This technology relates to methods of identifying individuals who may benefit from treatment with copper, particularly those having Menkes disease or Occipital Horn Syndrome.

Inventor: Stephen G. Kaler (NICHD).

Publication: SG Kaler, CS Holmes, DS Goldstein, JR Tang, SC Godwin, A Donsante, CJ Liew, S Sato, N Patronas. Neonatal diagnosis and treatment of Menkes disease. N Engl J Med. 2008 Feb 7;358(6):605–614. [PubMed: 18256395]

Patent Status: PCT Application No. PCT/US2008/078966 filed 06 Oct 2008, which published as WO 2010/042102 on 15 Apr 2010 (HHS Reference No. E–186–2008/0–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Division of Intramural Research, Molecular Medicine Program, Unit on Pediatric Genetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize population-based newborn screening for Menkes disease and related disorders of copper transport in order to identify subjects likely to benefit from copper injections and other treatments. Please contact Alan Hubbs, PhD at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Dated: December 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–32669 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A New Class of Antibiotics: Natural Inhibitors of Bacterial Cytoskeletal Protein FtsZ to Fight Drug-susceptible and Multi-drug Resistant Bacteria

Description of Technology: The risk of infectious diseases epidemic has been alarming in recent decades. This is not only because of the increase incident of so-called "super bugs," but also because of the scarce number of potential antibiotics in the pipeline. Currently, the need for new antibiotics is greater than ever! The present invention by the National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), part of the National Institute of Health (NIH), address this urgent need. The invention is a new class of chrysophaentin antibiotics that inhibit the growth of broad-spectrum, drug-susceptible, and drug-resistant bacteria.

Derived from the yellow algae *Chrysophaeum taylori,* the inventor has extracted 8 small molecules of natural products and tested for antimicrobial activity against drug resistant bacteria, methicillin-resistant *Staphylococcus aureus* (MRSA) and vancomycin-resistant *Enterococcus faecalis* (VRE), as well as other drug susceptible strains. Structurally, the molecules represent a new class of antibiotic that also likely work through a distinct mechanism of action from that of current antibiotics, which is key for the further development of antibiotics that inhibit drug-resistant strains.

The bacterial cytoskeletal protein FtsZ is a GTPase and has structural homology to the eukaryotic cytoskeletal protein tubulin, but lacks significant sequence similarity. FtsZ is essential for bacterial cell division. It is responsible for Z-ring assembly in bacteria, which leads to bacterial cell division. Experiments show that the disclosed compounds are competitive inhibitors of GTP binding to FtsZ, and must bind in the GTP-binding site of FtsZ. Inhibition of FtsZ stops bacterial cell division and is a validated target for new antimicrobials. FtsZ is highly conserved among all bacteria, making it a very attractive antimicrobial target.

Applications:

- Therapeutic potential for curing bacterial infections in vivo, including for clinical and veterinary applications.
- Antiseptics in hospital settings.
- Since FtsZ is structurally similar, but does not share sequence homology to eukaryotic cytoskeletal protein tubulin, these compounds may have antitumor properties against some cancer types or cell lines.

Advantages:

• Structurally distinct antimicrobial compounds.
• Attack newly validated antibacterial targeted protein FtsZ.
• These compounds have a unique mechanism of action which inhibit FtsZ by inhibiting FtsZ GTPase activity.
• Inhibit drug-susceptible and drug-resistant bacteria.

Development Status:
• Initial isolation and chemical structural characterization using NMR spectroscopy have been conducted.
• Antimicrobial testing against MRSA, *Enterrococcus faecium,* and VRE were conducted *in vitro* using a modified disk diffusion assay and microbroth liquid dilution assays.
• MIC_{50} values were determined using a microbroth dilution assay.
• Mode of action was elucidated and Saturation Transfer Difference (STD) NMR was conducted to map the binding epitope of one of these compounds in complex with recombinant FtsZ.
• Other experiments on different areas to further characterize these compounds and their mode of action are currently ongoing.

Market: The market potential for the disclosed compounds is huge due to the very limited number of new antibiotics developed in recent decades and the increased epidemic of infectious diseases. In fact, infectious diseases are the leading cause of death worldwide. In the United States alone, more people die from MRSA than from HIV (Journal of the American Medical Association, 2007) and more than 90,000 people die each year from hospital acquired bacterial infections (Centers for Disease Control).

According to the recent report, "*Antibiotics Resistance and Antibiotic Technologies: Global Markets*" published in November 2009, there has been a revival in the antibiotics sector over the past few years. Although some companies are developing analogues of existing antibiotic classes and putting them into clinical trials, other start-up biotechnology companies have come up with molecules that adopt new approaches in tackling antimicrobial infections. The antibacterials market can be split into two major groups: The community market and the hospital market. The smaller hospital market is expanding more rapidly, driven by rising resistant rates, a more severely ill patient population and newer, premium-priced injectable antibiotics. Interestingly, several big pharmaceutical companies have recently made strategic decisions to expand their presence in this sector by either acquiring other companies or in-licensing new compounds.

While the number of such new molecules in the approval stages is still low, R&D pipelines are promising, and several novel classes of antibiotics are in their early stages of development. This antibacterial R&D bailout that started about 5 years ago due to tougher regulatory conditions, restrictions on the use of antibiotics and emergence of resistance to newer antibiotics within 3 years has helped create a global antimicrobial therapeutic market of $24 billion in 2008 with 14 products recording sales of more than $1 billion.

Inventors: Carole A. Bewley *et al.* (NIDDK).

Related Publications:

1. DJ Haydon *et al.* An inhibitor of FtsZ with potent and selective anti-staphylococcal activity. Science. 2008 Sept 19; 321(5896):1673–1675. [PubMed: 18801997].
2. NR Stokes *et al.* Novel inhibitors of bacterial cytokinesis identified by a cell-based antibiotic screening assay. J Biol Chem. 2005 Dec 2; 280(48):39709–39715. [PubMed: 16174771].
3. J Wang *et al.* Discovery of small molecule that inhibits cell division by blocking FtsZ, a novel therapeutic target of antibiotics. J Biol Chem. 2003 Nov 7; 278(45):44424–44428. [PubMed: 12952956].
4. P Domadia *et al.* Berberine targets assembly of Escherichia coli cell division protein FtsZ. Biochemistry. 2008 Mar 11; 47(10):3225–3234. [PubMed: 18275156].
5. P Domadia *et al.* Inhibition of bacterial cell division protein FtsZ by cinamaldehyde. Biochem Pharmacol. 2007 Sep 15:74(6):831–840. [PubMed: 17662960].
6. S Urgaonkar *et al.* Synthesis of antimicrobial natural products targeting FtsZ: (+/-)-dichamanetin and (+/-)-2‴-hydroxy-5″-benzylisouvarinol-B. Org Lett. 2005 Dec 8;7(25):5609–5612. [PubMed: 16321003].

Patent Status: U.S. Provisional Application No. 61/308,911 filed 27 Feb 2010 (HHS Reference No. E–116–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts:
• Uri Reichman, Ph.D., MBA; 301–435–4616; *UR7a@nih.gov*.
• John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Laboratory of Bioorganic Chemistry is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the chrysophaentin antibiotics. Please contact Cindy K. Fuchs at 301–451–3636 or *cfuchs@mail.nih.gov* for more information.

GATA–3 Reporter Plasmids for Revealing Underlying Mechanisms in Breast Cancer

Description of Technology: Scientists at the National Institutes of Health (NIH) have developed GATA–3 gene reporter plasmids that express a green fluorescent protein (GFP) or luciferase reporter protein under the control of a GATA–3 promoter. Cells expressing this plasmid will glow fluorescent green or emit light energy, respectively, if GATA–3 gene expression is activated in the cells. The reporter construct allows cells where GATA–3 gene expression is activated to be isolated and collected for further analysis or be monitored in the host environment.

GATA–3 is a transcription factor that is highly expressed in several types of cells and is a critical transcription factor for the development of particular lineages of hematopoietic cells and normal mammary luminal epithelium. GATA–3 plays a regulatory role in determining the fate of cells in the hematopoietic systems and the mammary gland. Disruption of GATA–3 expression leads to defects in the development of sub-types of lymphoid cells and luminal mammary epithelial cells. GATA–3 expression is highly associated with luminal sub-types of breast cancer, whereas expression of GATA–3 is low or undetectable in basal subtypes of breast cancer which often have a poor prognosis. Low or limited GATA–3 expression is correlated with larger tumors, increased likelihood of tumor-positive lymph nodes, and predicts an overall poorer clinical outcome compared to patients with higher mammary GATA–3 expression. Researchers believe that a better understanding of GATA–3 function and its dysregulation during the onset and progression of breast cancer will lead to new strategies in diagnosing and treating the disease.

Applications:
• Research tool to help identify factors that modify GATA–3 expression that may serve as potential therapeutic targets for developing drugs to treat breast cancer or hematologic malignancies.
• Research tool that could be utilized as an important component of a breast cancer diagnostic kit or platform to better understand the most effective treatment options for individual breast cancer patients.
• Molecular tool to better understand the mechanisms that contribute to hematopoietic and mammary cell/gland

development and differentiation in order to identify the critical stages where dysfunction can lead to the onset of breast cancer.

• Molecular biology laboratory tool for sorting breast cancer positive and negative cells so that further comparative experiments can be performed to understand the cellular properties of the two sets of cells.

Advantages:

• *Useful for in vitro and in vivo assays:* Using the GFP or luciferase expression of these reporter plasmids, researchers can identify cells expressing various levels of GATA–3 and isolate these different subsets *in vitro.* These reporter constructs can also be transfected into cells to measure GATA–3 expression levels *in vivo* in real time from hematopoietic and breast cancer models.

• *Possible identification of new targets for breast cancer therapy:* The reporter plasmids could be utilized to identify factors that serve to activate GATA–3 in normal mammary cells or inhibit GATA–3 expression in breast cancer cells. Such factors could serve as targets for novel breast cancer therapies.

Inventors: Hosein Kouros-Mehr (formerly NCI) and Jeffrey E. Green (NCI)

Selected Publications:

1. H. Kouros-Mehr, *et al.* GATA–3 and the regulation of the mammary luminal cell fate. Curr Opin Cell Biol. 2008 Apr;20(2):164–170. [PubMed: 18358709]

2. H. Kouros-Mehr, *et al.* GATA–3 links tumor differentiation and dissemination in the luminal breast cancer model. Cancer Cell 2008 Feb;13(2):141–152. [PubMed: 18242514]

3. H. Kouros-Mehr, *et al.* GATA–3 maintains the differentiation of the luminal cell fate in the mammary gland. Cell 2006 Dec 1;127(5):1041–1055. [PubMed: 17129787]

Patent Status: HHS Reference No. E–128–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov*.

Dated: December 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–32671 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: March 16–18, 2011.

Time: 6 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: *December 16, 2010.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32645 Filed 12–27–10; 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; Member Conflict: Cardiac Development.

Date: January 4, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. 301–443–8130.

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: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32639 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, January 6, 2011, 1 p.m. to January 6, 2011, 3:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 16, 2010, 75 FR 78719–78720.

The meeting has been changed to an Internet Assisted Meeting (IAM). The meeting will be two days January 6, 2011, 9 a.m. to January 7, 2011, 5 p.m. The meeting is closed to the public.

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32638 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group. Microbiology and Infectious Diseases Research Committee.

Date: February 16–17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michelle M. Timmerman, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616. 301–451–4573. *timmermanm@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32631 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 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 Allergy and Infectious Diseases Special Emphasis Panel. Development of Therapeutics Products for Biodefense.

Date: January 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616. 301–451–2671. *aabbey@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Development of Therapeutics Products for Biodefense.

Date: January 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616. 301–451–2671. *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32630 Filed 12–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection: Comment Request.

ACTION: 60-Day Notice of Information Collection Under Review: E-Verify Program Data Collection; OMB Control No. 1615–New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 28, 2011.

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 Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add E-Verify Program Data Collection in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning E-Verify Program Data Collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* E-Verify Program Data Collection.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The E-Verify Data Collection is necessary in order for U.S. Citizenship and Immigration Services (USCIS) to obtain data from employers regarding the E-Verify Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 900 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 450 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: December 21, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–32546 Filed 12–27–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Australia Beef Imports Approved for the Electronic Certification System (eCERT)

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice that effective January 3, 2011, the export certification requirement for imports of beef from Australia subject to quantitative restraints will be accomplished through the Electronic Certification System (eCERT). Beginning on that date, all such imports must be accompanied by an eCERT transmission in lieu of the paper export certificate. This change is being made at the request of Australia's Department of Agriculture Forestry and Fisheries and with the approval of the United States Government.

DATES: The use of the eCERT process for all Australian beef importations subject to within quantity restrictions will be effective for beef entered, or withdrawn from warehouse, for consumption on or after January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Quota Branch, Trade Policy and Programs, (202) 863–6508.

SUPPLEMENTARY INFORMATION:

Background

There are existing quantitative restraints on beef from Australia pursuant to U.S. Note 3, subchapter XIII, Chapter 99, Harmonized Tariff Schedule of the United States (HTSUS), and subheading 9913.02.05, HTSUS. The U.S. Note states that the within-quota amounts will receive duty-free treatment if the importer makes a declaration to Customs and Border Protection (CBP) that a valid export certificate issued by the Government of Australia is in effect for the goods. The existing tariff rate quotas and export certificate requirement for beef from Australia set forth in U.S. Note 3, subchapter XIII, Chapter 99, HTSUS, are derived from paragraph 3 of Annex I of the General Notes to the Tariff Schedule of the United States under Annex 2–B of the United States-Australia Free Trade Agreement. Section 132.15 of the CBP regulations (19 CFR 132.15) sets forth provisions relating to the requirement that an export certificate must accompany imports of beef subject to quota.

The Electronic Certification System (eCERT) is a system developed by CBP that uses electronic data transmissions of information normally associated with a required export document such as a license or certificate to facilitate the administration of quotas and ensure that the proper restraint levels are charged without being exceeded. Australia currently uses the eCERT process for all dairy quota importations into the United States.

Foreign countries participating in eCERT transmit information via a global network service provider. This allows connectivity to the CBP Automated Commercial System (ACS). When making entry, specific data elements transmitted to CBP by the importer/broker must match eCERT data from the foreign country before any applicable quota is reported. The ability to have government-to-government transmission decreases the potential for circumvention of quotas resulting from counterfeit documents.

Although the release of the shipment is not precluded by the absence of certificate information, no claims for a preferential duty rate will be considered unless the information transmitted by the filer matches the information transmitted by the foreign government. If the certification is not available at time of entry, the filer has the option to use the non-preferential rate of duty or warehouse, export, or destroy the merchandise. The filer may file a protest if the certification transmission is received after liquidation of an entry, using the appropriate guidelines.

This document provides notification that Australia will be using the eCERT process for beef entries subject to quantitative quota restrictions beginning January 3, 2011. Such imports that are entered, or withdrawn from warehouse, for consumption on or after that date must be accompanied by an eCERT transmission in lieu of the paper export certificate.

Dated: December 21, 2010.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2010–32537 Filed 12–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5378–N–07]

Notice of Proposed Information Collection Comment Request; Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The currently approved information collection related to Section 3 of the Housing and Urban Development Act of 1968 (2529–0043) is being submitted to the Office of Management and Budget (OMB) as a new collection, as required by the Paperwork Reduction Act. Form HUD 60002 is being submitted without any changes. Form HUD 958 has been revised to more accurately reflect the complaint investigation procedures set forth in the Section 3 regulation at 24 CFR part 135. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: February 28, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Paperwork Reduction

Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410. Telephone number (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5234, Washington, DC 20410, telephone (202) 402–3468. (This is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the currently approved information collection for 2529–0043 to OMB as a new collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 34, as amended). Form HUD 60002 is being submitted without any changes. Form HUD 958 has been revised to more accurately reflect the complaint investigation procedures set forth in the Section 3 regulation at 24 CFR part 135. This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Enhance the effectiveness of the Section 3 Program, (2) Enhance the quality, utility, and clarity of the information to be collected; and (3) Minimize the burden of the collection of information on those who respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Economic Opportunity for Low-and Very Low-Income Persons

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0043.

Description of the need for the information and proposed use:

A. The Section 3 Summary Report (HUD form 60002)

The information will be used by the Department to monitor program recipients for compliance with the requirements of Section 3 of the Housing and Urban Development Act of 1968. HUD Headquarters will use the information to assess the results of each recipient's efforts to meet the regulatory objectives of Section 3, and to prepare mandatory reports for Congress and the general public assessing the effectiveness of Section 3. The data collected will be used by recipients as a self-monitoring tool. The data collection for this form is unchanged.

B. Complaint register (Revised HUD form 958)

The information will be used by residents and businesses to submit complaints alleging noncompliance with the regulatory requirements of Section 3. HUD staff will use this form to respond to and investigate complaints filed. The data collection for this form has been revised to more accurately reflect the complaint investigation procedures set forth in the Section 3 regulation at 24 CFR part 135.

Agency form numbers, if applicable: Form HUD 60002 and HUD 958 Revised.

Members of affected public: State and local governments agencies; public and private non-profit organizations; Public Housing Authorities; other public entities; low- and very low-income persons; and/or businesses that are either owned by, or substantially employ, low- or very low-income persons.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis approximately 5,000 respondents (HUD recipients) will submit form HUD 60002 to HUD. It is estimated that four hours per annual reporting period will be required of the recipients to prepare the Section 3 report for a total of 20,000 hours. Form HUD 958 is submitted by approximately 100 persons annually and takes approximately 2 hours to complete for a total of 200 hours.

Status of the proposed information collection: Reinstatement of a currently approved collection of information from HUD recipients. Form HUD 60002 is unchanged. Form HUD 958 is submitted with changes.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 20, 2010.

Staci Gilliam,

Director, Economic Opportunity Division.

[FR Doc. 2010–32678 Filed 12–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5378–N–06]

Notice of Submission of Proposed Information Collection to OMB; Section 3 Implementation and Coordination Grant Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of Proposed Information Collection.

SUMMARY: The proposed information collection requirement described below is being submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

This is a request for approval to provide competitive funding to States, units of local government, Public Housing Authorities, Indian Housing Authorities, Indian Tribes, or other public bodies to pay for the salaries, fringe benefits, and administrative expenses related to hiring a Section 3 Program Coordinator. Information collected under this approval will be used to select the highest ranked applicants, and to conduct quarterly and annual performance assessments.

DATES: February 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 60 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: Colette Pollard, Paperwork Reduction Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410. HUD Desk Officer, telephone number (202) 402–3400 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at: 1–800–877–8399.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5234, Washington, DC 20410, telephone (202) 402–3468. (This is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting this proposed information collection requirement to OMB for 2529–0050, as described below.

This notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the proposed collection of information; (3) Enhance the quality, utility and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* electronic transmission of data.

Title of Regulation

OMB Control Number, if Applicable: 2529–0050.

Description of Information Collection: The proposed information collection is intended to assess the qualifications and eligibility of applicants for funding under the Section 3 Program Coordination and Implementation Notice of Funding Availability (NOFA). It will assess each applicant's ability to hire a Section 3 Program Coordinator who will be responsible for carrying out key assignments that will produce employment, training, and contracting opportunities for low- and very low-income persons and certain businesses located in the community that the Coordinator serves. Recipients of funding under this NOFA will also be required to submit quarterly and annual reports to the Department documenting their progress and performance with accomplishing goals under the NOFA. This information will be submitted to HUD in the form of narrative reports that are based on milestones and deliverables established in the grantee's Work Plan.

Agency Form Number(s), if Applicable: Forms SF–424, SF–424 Supplement, SF LLL, HUD 965, HUD 966, HUD 967, HUD–2880, HUD 2990, HUD 2993, HUD–424CB, HUD–424CBW, HUD–2994–A, HUD–27300, HUD–96010, and 96011.

Members of Affected Public: States, units of local government, Public Housing Authorities, Indian Housing Authorities, Indian Tribes, or other public bodies.

Estimation of the Total Numbers of Hours Needed To Prepare the Information Collection Including the Number of Respondents, Frequency of Response, and Hours of Response: An estimation of the total number of hours needed to prepare the information collection is 10 hours, the likely number of respondents is 515 applicants, with a frequency of response of 5 per annum.

Status of the Proposed Information Collection: Proposed new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 16, 2010.

Staci Gilliam,

Director, Economic Opportunity Division.

[FR Doc. 2010–32681 Filed 12–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–127]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Housing Choice Voucher Program Administrative Fee Study Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for the clearance of on-site data collection from public housing agencies (PHAs). The proposed data collection has three purposes: (1) To identify a sample of PHAs that are verified to be operating high-performing and efficient HCV programs, (2) to test alternative methods of measuring time spent on administrative functions in the HCV program, and (3) to collect information on the factors that affect administrative costs in the HCV program. The proposed data collection will take place through site visits to 60 PHAs and will include interviews with PHA staff, interviews with program partners, and reviews of client files and administrative data collected by the PHA, included documentation related to the HCV program budget. In addition, at 5 of the 60 sites the research team will beta-test three alternative methods of collecting data on PHA staff time spent on the range of activities required to administer the HCV program. The results of the site visits and beta-tests will be used to develop the research design, sampling approach, and data collection instruments for a national study of the costs of administering the HCV program based on direct measurement of staff and other program costs among a sample of high-performing HCV programs. The results of this national study—for which separate OMB clearance will be sought—will be used to estimate administrative fees and develop a new administrative fee allocation formula for the HCV program.

DATES: *Comments Due Date: January 27, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2528–Housing Choice Voucher Program Administrative Fee Study) and should be sent to: Ross A. Rutledge, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Ross.A.Rutledge@omb.eop.gov*; Fax: 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* 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: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or

other forms of information technology (*e.g.,* permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Housing Choice Voucher Program Administrative Fee Study.

Description of Information Collection: This request is for the clearance of on-site data collection from public housing agencies (PHAs). The proposed data collection has three purposes: (1) To identify a sample of PHAs that are verified to be operating high-performing and efficient HCV programs, (2) to test alternative methods of measuring time spent on administrative functions in the HCV program, and (3) to collect information on the factors that affect administrative costs in the HCV program. The proposed data collection will take place through site visits to 60 PHAs and will include interviews with PHA staff, interviews with program partners, and reviews of client files and administrative data collected by the PHA, included documentation related to the HCV program budget. In addition, at 5 of the 60 sites the research team will beta-test three alternative methods of collecting data on PHA staff time spent on the range of activities required to administer the HCV program. The results of the site visits and beta-tests will be used to develop the research design, sampling approach, and data collection instruments for a national study of the costs of administering the HCV program based on direct measurement of staff and other program costs among a sample of high-performing HCV programs. The results of this national study—for which separate OMB clearance will be sought—will be used to estimate administrative fees and develop a new administrative fee allocation formula for the HCV program.

OMB Control Number: 2528–NEW.

Agency Form Numbers: None.

Members of Affected Public: Up to 375 public housing agency staff persons (an average of 5 staff members at each of the 60 sites, plus up to 15 staff members at the 5 beta-test sites) and up to 180 staff from partner organizations (an average of 3 representatives of partner organizations at each of the 60 sites).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The average time for a PHA staff person to complete the interview is 1.5 hours. Up to 5 PHA staff will be interviewed per site, for a maximum estimated burden for the PHA staff interviews of 600 hours (300 people times 2 hours per person). In addition, up to 3 representatives of program partners will be interviewed per site, for a maximum estimated burden for the program partner interviews of 180 hours (180 people times 1 hour per person). Finally, at the 5 beta-test sites, up to 15 PHA staff will spend up to 20 minutes per day for 5 days documenting time spent on various activities related to voucher program administration, for a maximum estimated staff burden of 127.5 hours (75 people times 1.7 hours per person). These same staff will also participate in 1 hour of training related to the beta-test data collection, for a maximum staff burden of 75 hours (75 staff times 1 hour per person). The total estimated burden across the three data collection activities for the study is 980 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 21, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–32684 Filed 12–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–14]

Privacy Act of 1974: Notice of New System of Records, Single Family Computerized Homes Underwriting Management Systems

AGENCY: Department of Housing and Urban Development.

ACTION: Revision to the routine uses.

SUMMARY: Modified the routine uses to identify the Federal Reserve as a Federal agency that receives CHUMS data for statistical research. The Computerized Homes Underwriting Management System supports Housing staff in the processing of single family mortgage insurance applications, from initial receipt through endorsement. F17/CHUMS processes loans for first time homebuyers, Home Equity Conversion Mortgages (HECM), Section 203(k) for the rehabilitation of existing properties, VA Certified FHA loans and other programs. F17/CHUMS also provide automated assistance in appraisal, mortgage credit evaluation, and FHA's TOTAL Scorecard, a standardized credit assessment tool. It supports the conditional commitment process from the Mortgagee's request for property appraisal through issuance of a conditional commitment, firm commitment, endorsement, and the automated production of the Mortgage Insurance Certificate.

DATES: *Effective Date:* This proposal shall become effective *January 27, 2011,* unless comments are received on or before that date which would result in a contrary determination.

Comment Due Date: January 27, 2011.

ADDRESSES: Office of Single Family Program Development, 451 7th Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8047. For Housing information: Bonnie McCloskey, 451 7th Street, SW., Room 9280, Washington, DC 20410, Telephone Number (202) 402–8138. A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. section 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the proposed new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 30-day period in which to conclude its review of the system. Therefore, please submit any comments by July 31, 2010. In accordance with 5 U.S.C. 552a(r) and OMB Cir. A–130, the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: December 20, 2010.

Jerry E. Williams,

Chief Information Officer.

HUD/H–5

SYSTEM NAME:

Single Family Computerized Homes Underwriting Management System (CHUMS).

SYSTEM LOCATION:

HUD Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs and individuals who unsuccessfully applied for an insured mortgage. Also, individuals involved in the HUD/FHA single-family underwriting process (builders, fee appraisers, fee inspectors, mortgagee

staff appraisers, mortgagee staff underwriters) and HUD employees involved in the single family underwriting process (*e.g.,* staff appraisers, staff mortgage credit examiners, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks).

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated files contain name, address, Social Security Number or other identification number; racial/ethnic background, if disclosed, of the mortgagor and information about the mortgage loan. These records also contain the name, address, Social Security Number or other identification number, territory, workload, and minority data (including racial/ethnic background, Minority Business Enterprise (MBE) Code, and sex, for statistical tracking purposes) of builders, fee appraisers, and fee inspectors. These records will further contain the name and identifying number of each mortgagee staff appraiser and each mortgagee staff underwriter and the territory and workload of those individuals. Additionally, the automated files contain identification (name and social security or other identifying number) of HUD employees involved in the single family underwriting process (Homeownership Center managers, staff appraisers, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 203, National Housing Act, Public Law 73–479. The information collection enables HUD/FHA to process applications for HUD mortgage insurance and respond to inquiries regarding applications and insured mortgages.

PURPOSES:

The Computerized Homes Underwriting Management System supports Housing staff in the processing of single family mortgage insurance applications, from initial receipt through endorsement. F17/CHUMS processes loans for first time homebuyers, Home Equity Conversion Mortgages (HECM), Section 203(k) for the rehabilitation of existing properties, VA Certified FHA loans and other programs. F17/CHUMS also provides automated assistance in appraisal, mortgage credit evaluation, and FHA's TOTAL Scorecard, a standardized credit assessment tool. It supports the conditional commitment process from the Mortgagee's request for property appraisal through issuance of a conditional commitment, firm commitment, endorsement, and the automated production of the Mortgage Insurance Certificate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include: (a) To other agencies; such as, Departments of Agriculture, Education and Veterans Affairs, and the Small Business Administration—for use of HUD's Credit Alert Interactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. (b) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring. (c) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring. (d) To General Accounting Office (GAO) for audit purposes. (e) To other federal agencies, including the Federal Reserve, and to financial institutions and computer software companies for automated underwriting, credit scoring and other risk management evaluation studies. (f) To other Federal agencies, including the Federal Reserve, for purposes of statistical research, not involving personally identifiable information, to evaluation program effectiveness in meeting the United States Department of Housing and Urban Development/FHA's mission and to inform policy makers on changes to effect program improvements. If the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; or if the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the HUD or another agency or entity) that rely upon the compromised information; than the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number or other identification number.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Computerized records of insured cases are retained for 10 years and those on rejected cases are retained for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Home Mortgage Insurance Division, HUAH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

Include the following standard language: Procedures for the amendment or correction of records, and for applicants want to appeal initial agency determination appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagors, appraisers, inspectors, builders, mortgagee staff appraisers, mortgagee staff underwriters, and HUD employees.

EXEMPTIONS FOR CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–32688 Filed 12–27–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Commercial Lease for the Cape Wind Energy Project

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Notice of Availability ("NOA") of a Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf ("OCS") for the Cape Wind Energy Project.

SUMMARY: Pursuant to its authority under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. 1331 *et seq.,* as amended; and the Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf Rules, 30 CFR part 285 ("Rule"), BOEMRE has issued a Commercial Lease ("Lease") for an area of approximately 46 square miles on the OCS in Nantucket Sound off the coast of Cape Cod, Massachusetts. This NOA is being published to announce the availability of the Lease in accordance with the requirements of 30 CFR 285.231. The Lease is for the Cape Wind Energy Project ("Project") which grants Cape Wind Associates, LLC, ("CWA") the exclusive right to conduct certain activities within the leased area, subject to the terms and conditions of the Lease, and applicable laws and regulations. The Lease requires CWA to pay $88,278 in annual rent prior to production, and a two to seven percent operating fee rate following the start of production during the 33-year lease (a 5-year site assessment term and a 28-year commercial operations term). The rent and operating fee are based on the requirements set forth in 30 CFR part 285, subpart E. The Project plan calls for 130 wind turbines capable of generating a maximum electric output of 468 megawatts with an anticipated average output of 183 megawatts. Construction and operation of the Project cannot begin until BOEMRE reviews and approves plans submitted by CWA that detail construction and operation of the Project in accordance with the Rule.

Authority: The NOA of the Lease issuance is published pursuant to 30 CFR 285.231.

SUPPLEMENTARY INFORMATION:

Cape Wind Energy Project Description

The Energy Policy Act of 2005 ("EPAct") and amendments to the OCSLA gave the Secretary of the Department of the Interior the authority to issue leases, easements, and rights-of-way for renewable energy activities on the OCS. The Secretary delegated this authority to BOEMRE, formerly the Minerals Management Service. Following passage of EPAct in 2005, CWA submitted an application for Project to BOEMRE. In 2009, BOEMRE finalized the Rule that governed the issuance of leases, easements, and rights-of-way and the regulation of offshore renewable energy activities.

The Project plan calls for 130 3.6 megawatt wind turbine generators, each with a maximum blade height of 440 feet, to be arranged in a grid pattern on the OCS in Nantucket Sound. The transmission cables for the Project, if approved, would pass through Massachusetts' submerged lands. With a maximum electric output of 468 megawatts and an average anticipated output of 183 megawatts, the Project is expected to generate electricity equivalent to three-quarters of the Cape and nearby islands' electricity needs. Each of the 130 wind turbine generators would generate electricity independently. Solid dielectric submarine inner-array cables from each wind turbine generator would interconnect within the array and terminate on an electrical service platform ("ESP"), which would serve as the common interconnection point for all of the wind turbines. The Project plan calls for a submarine transmission cable system approximately 12.5 miles in length from the ESP to a landfall location in Yarmouth, Massachusetts (7.6 miles of which would fall within the state of Massachusetts' jurisdiction).

Availability of the Lease:

To obtain a single printed copy of the Lease, you may contact BOEMRE, Office of Offshore Alternative Energy Programs (Mail Stop 4090), 381 Elden Street, Herndon, Virginia 20170–4817. An electronic copy of the Lease is available at BOEMRE's Web site at: *http://www.boemre.gov/offshore/RenewableEnergy/CapeWind.htm.*

FOR FURTHER INFORMATION CONTACT: Bureau of Ocean Energy Management, Regulation and Enforcement, Ms. Maureen A. Bornholdt, Program Manager, Office of Offshore Alternative Energy Programs, MS 4090, 381 Elden Street, Herndon, Virginia 20170–4817, (703) 787–1300.

Dated: December 20, 2010.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–32672 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N247; 40120–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Notice of Availability of the St. Andrew Beach Mouse Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the recovery plan for the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*). The recovery plan includes specific recovery objectives and criteria to be met in order to reclassify this species to threatened status and delist it under the Endangered Species Act of 1973, as amended (Act).

ADDRESSES: You can obtain copies of the St. Andrew beach mouse recovery plan by contacting the Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405 (telephone (850) 769–0552) or by visiting our Web site at *http://endangered.fws.gov/recovery/index.html#plans* or *http://fws.gov/panamacity/.*

FOR FURTHER INFORMATION CONTACT: Ben Frater at the above address (telephone 850/769–0552, ext. 248; TTY users may contact Mr. Frater through the Federal Relay Service at (800) 877–8339).

SUPPLEMENTARY INFORMATION:

Background

The St. Andrew beach mouse was listed as endangered on December 18, 1998 (63 FR 70053). The endangered St. Andrew beach mouse is now found in two populations: East Crooked Island, Bay County, Florida, and St. Joseph Peninsula, Gulf County, Florida.

The St. Andrew beach mouse inhabits the frontal dunes (which are composed of the primary and secondary dunes) and adjacent inland scrub dunes within the coastal ecosystem. Beach mice

require well-developed dune systems in which to live out their life cycle. They dig their burrows into the face of the dunes near vegetative cover. Their diet is comprised primarily of the seeds and fruits of plants within their dune habitat, with insects providing seasonal supplements.

Threats to the St. Andrew beach mouse include habitat loss/alteration from land development and associated human use, hurricanes and other tropical storm events, nonnative predators, and recreational activities associated with development and tourism that weaken and encroach on the dune ecosystem. Availability of suitable habitat may be a limiting factor during periods of population expansion or following catastrophic weather events. Due to the species' limited range and fragmentation of its habitat, these threats combined continue to present a threat to the species' existence.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act (16 U.S.C. 1533 *et seq.*) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We made the draft St. Andrew beach mouse recovery plan available for public comment from April 22, 2009 through June 22, 2009 (74 FR 18403). We considered information we received during the public comment period and information from peer reviewers in our preparation of this final recovery plan. We will forward substantive comments to other Federal agencies so that each agency can consider these comments in implementing approved recovery plans.

Recovery Plan Components

The objective of this plan is to provide a framework for the recovery of the St. Andrew beach mouse, so that protection under the Act is no longer necessary. The plan presents criteria for reclassifying and delisting the beach mouse. As these criteria are met, the status of the species will be reviewed and it will be considered for reclassification or removal from the Federal List of Endangered and Threatened Wildlife.

The St. Andrew beach mouse will be considered for downlisting to threatened status when the following criteria are achieved:

1. Stable or increasing population trends are maintained at St. Joseph Peninsula State Park and East Crooked Island on Tyndall Air Force Base over a 10-year period based on data obtained from accepted standardized monitoring methods.

2. An additional viable or self sustaining population is reestablished at St. Joe Beach that shows a stable or increasing trend, after the initial repopulation of unoccupied habitat, over a 10-year period based on data obtained from accepted standardized monitoring methods.

3. At least 87 percent of designated St. Andrew beach mouse critical habitat is protected and under a management plan that addresses conservation of beach mice. The plans, at a minimum, address the following:

(a) Impact of commercial/residential development and recreational use, including that of pedestrians and motorized vehicles, to beach mouse habitat.

(b) Impact of shoreline erosion to beach mouse habitat.

(c) Impact of artificial lighting on beach mouse habitat.

(d) Control of feral cats and hogs in beach mouse habitat.

4. In areas with known populations of beach mice (Tyndall Air Force Base's property at East Crooked Island, St. Joseph Peninsula State Park, and their respective adjacent private lands), non-native predators, including free roaming cats and cat colonies, are controlled at levels in which they do not pose a threat to beach mice.

5. County or local government, within the range of the St. Andrew beach mouse, have regulations or other protection mechanisms that:

(a) Minimize impacts to dunes in beach mouse habitat due to recreational use.

(b) Prohibit free-roaming cats and cat colonies.

(c) Minimize impacts of commercial and residential developments in primary, secondary, and scrub dunes. Measures include minimizing footprints; preserving connectivity between primary, secondary and scrub dunes; using native landscaping; and constructing boardwalks over dunes for beach access.

(d) Minimize impacts of artificial lighting in beach mouse habitat by requiring sea turtle lighting, in areas visible from the beach and wildlife lighting, in areas not visible from the beach.

6. An emergency response plan is prepared to prevent extirpation of any population of St. Andrew beach mice from tropical storms/hurricanes and other disasters.

7. If determined to be necessary, an Action Plan is prepared to address the potential threat of cross-breeding with Choctawhatchee beach mice from West Crooked Island.

8. House mice are controlled in areas with known populations of beach mice at levels in which they do not pose a threat to the population(s).

The St. Andrew beach mouse will be considered for removal from the Federal List of Endangered and Threatened Wildlife when the following criteria are achieved:

1. Stable or increasing population trends are maintained at St. Joseph Peninsula State Park, East Crooked Island on Tyndall Air Force Base, and St. Joe Beach over a 20-year period based on data obtained from accepted standardized monitoring methods.

2. An additional viable population is reestablished at Cape San Blas, Eglin Air Force Base, and has a stable or increasing population trend over a 10-year period based on data obtained from standardized monitoring methods.

3. All designated St. Andrew beach mouse critical habitat on public land is protected and under a management plan that addresses conservation of beach mice, priority is given to those lands that provide connectivity. The plans, at a minimum, manage for the following:

(a) Impact of commercial/residential development and recreational use, including that of pedestrians and motorized vehicles, to beach mouse habitat.

(b) Impact of shoreline erosion to beach mouse habitat.

(c) Impact of artificial lighting on beach mouse habitat.

(d) Control of feral cats and hogs, including free ranging cats in beach mouse habitat.

4. Within all critical habitat that is protected and under a management plan, non-native predators, including free roaming cats and cat colonies, are controlled at levels in which they do not pose a threat to beach mice.

5. County or local government regulations or other protection mechanisms as set forth in the downlisting criteria have adequate compliance and enforcement.

6. House mice continue to be deemed a minimal or no threat to St. Andrew beach mouse populations.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 25, 2010.

Mark J. Musaus,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–32666 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for No Child Left Behind Act Implementation; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE or Bureau) is submitting to the Office of Management and Budget (OMB) for renewal the collection of information for implementation of certain regulations implementing the No Child Left Behind Act. The information collection is currently authorized by OMB Control Number 1076–0163, which expires December 31, 2010.

DATES: Interested persons are invited to submit comments on or before January 27, 2011.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.* Please send a copy of your comments to Brandi Sweet, Program Analyst, Bureau of Indian Education, Mail Stop 3623–MIB, 1849 C Street, NW., Washington, DC 20240; or by e-mail to *Brandi.Sweet@bie.edu*.

FOR FURTHER INFORMATION CONTACT: Brandi Sweet (202) 208–5504.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIE is seeking renewal of the approval for the information collection conducted under 25 CFR parts 30, 37, 39, 42, 44, and 47 under OMB Control Number 1076–0163. This information collection is necessary to implement Public Law 107–110, No Child Left Behind Act of 2001 (NCLB). The NCLB requires all schools, including Bureau-funded schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. The BIE has promulgated several regulations implementing the NCLB Act. This OMB Control Number addresses the information collected under the following regulations.

- 25 CFR part 30—Adequate Yearly Progress (AYP). Tribes/school boards may request an alternative to the established AYP definition or standards. Tribes/school boards may provide evidence that BIE made an error in identifying the school for improvement. Achievement, attendance and graduation rates are collected from schools to facilitate yearly calculation of AYP.
- 25 CFR part 37—Geographic Boundaries. This part establishes procedures for confirming, establishing, or revising attendance areas for each Bureau-funded school. Tribes and school boards must submit certain information to BIE to propose a change in geographic boundaries.
- 25 CFR part 39—Indian School Equalization Program (ISEP). This part provides for the uniform direct funding of Bureau-operated and tribally operated day schools, boarding schools, and dormitories. Auditors of schools, to ensure accountability in student counts and student transportation, must certify that they meet certain qualifications and have conducted a conflict of interest check. Schools must submit information to BIE to apply for funds in the event of an emergency or unforeseen contingency.
- 25 CFR part 42—Student Rights. The purpose of this part is to govern student rights and due process procedures in disciplinary proceedings in all Bureau-funded schools. This part requires the school to provide notice of disciplinary charges, provide a copy of the hearing of record, and provide a student handbook.
- 25 CFR part 44—Grants under the Tribally Controlled Schools Act. The purpose of this part is to establish who is eligible for a grant and requires tribes to submit information to BIE to retrocede a program to the Secretary.
- 25 CFR part 47—Uniform Direct Funding and Support for Bureau-operated Schools. This part contains the requirements for developing local educational financial plans in order to receive direct funding from the Bureau. This part requires school supervisors to submit quarterly reports to school boards; submit a notice of appeal to the BIE for a decision where agencies disagree over expenditures; make certain certifications in financial plans; and send the plan and documentation to the BIE or submit a notice of appeal.

II. Request for Comments

The BIE requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0163.

Title: No Child Left Behind, 25 CFR 30, 37, 39, 42, 44, and 47.

Brief Description of Collection: Pursuant to NCLB implementing regulations, Bureau-funded schools must provide certain information if they wish to use alternative AYP standards, change their geographic boundaries, obtain contingency funds, retrocede a program, or obtain direct funding from the Bureau through submission of a local educational financial plan. For these items, a response is required to obtain a benefit (continued supplementary program funding). In addition, all Bureau-funded schools must provide students with written notice of disciplinary charges, a copy of the hearing record, and student

handbook. These items are mandatory information collections.

Type of Review: Extension without change of a currently approved collection.

Respondents: Bureau-funded schools.

Number of Respondents: 183.

Total Number of Responses: 14,554.

Frequency of Response: Quarterly, annually, or on occasion, depending on the item.

Estimated Time per Response: Ranges from 1 hour to 480 hours.

Estimated Total Annual Burden: 27,355 hours.

Dated: December 14, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2010–32695 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

[Account Number: 6365–SZM]

President William Jefferson Clinton Birthplace Home National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior designates the site located at 117 South Hervey Street, Hope, Arkansas 71801, as the "President William Jefferson Clinton Birthplace Home National Historic Site."

FOR FURTHER INFORMATION CONTACT: Contact Nick Chevance, Midwest Regional Office, at (402) 661–1844.

SUPPLEMENTARY INFORMATION: Section 7002 of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) includes a specific provision relating to establishment of this unit of the National Park System as follows:

> Should the Secretary of the Interior acquire, by donation only from the Clinton Birthplace Foundation, Inc., fee simple, unencumbered title to the William Jefferson Clinton Birthplace Home site located at 117 South Hervey Street, Hope, Arkansas, 71801, and to any personal property related to that site, the Secretary shall designate the William Jefferson Clinton Birthplace Home site as a National Historic Site and unit of the National Park System, to be known as the "President William Jefferson Clinton Birthplace Home National Historic Site."

On December 14, 2010, the Clinton Birthplace Home Foundation, Inc. donated to the United States, the property known as 117 South Hervey Street, Hope, Arkansas 71801. The property includes President Clinton's birthplace home and the personal property therein as well as the Virginia Cassidy Blythe Clinton Kelley Memorial Garden, and another improvement housing the Museum Store and Exhibit Center. With the donation of these lands and personal property, the Secretary hereby designates the site as a unit of the National Park System to be known as the "President William Jefferson Clinton Birthplace Home National Historic Site," effective December 14, 2010, as a unit of the National Park System and subject to all laws, regulations, and policies pertaining to such units.

Dated: December 17, 2010.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–32550 Filed 12–27–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–CAHA–1110–6213; 2310–0003–422]

Record of Decision

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision on the Final Environmental Impact Statement/Cape Hatteras National Seashore Off-Road Vehicle Management Plan.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), and the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Interior, National Park Service (NPS) has prepared and approved a Record of Decision (ROD) for the Final Environmental Impact Statement (Final EIS) for the Cape Hatteras National Seashore (Seashore) Off-Road Vehicle (ORV) Management Plan.

The ROD documents the decision by the NPS to implement Alternative F: NPS Preferred Alternative (the "selected action").

The selected action is necessary to regulate ORV use at the Seashore in a manner that is consistent with applicable law, and appropriately addresses resource protection (including protected, threatened, or endangered species), potential conflicts among the various Seashore users, and visitor safety. The selected action provides the basis for a proposed special regulation for ORV use at the Seashore. Section 4.10(b) of the NPS regulations in Title 36 of the Code of Federal Regulations (CFR), which implements Executive Orders 11644 and 11989, prohibits ORV use except on routes and areas designated in a special regulation. The ORV plan and special regulation are necessary to provide continued visitor access through the use of ORVs. The intended effects or objectives of this action are to:

- Minimize impacts from ORV use to soils and topographic features, for example, dunes, ocean beach, wetlands, tidal flats, and other features;
- Provide protection for threatened, endangered, and other protected species (*e.g.,* state-listed species) and their habitats, and minimize impacts related to ORV and other uses as required by laws and policies, such as the Endangered Species Act, the Migratory Bird Treaty Act, and NPS laws and management policies;
- Minimize impacts to native plant species from ORV use;
- Minimize impacts to wildlife species and their habitats from ORV use;
- Protect cultural resources such as shipwrecks, archeological sites, and cultural landscapes from impacts related to ORV use;
- Ensure that ORV operators are informed about the rules and regulations regarding ORV use at the Seashore;
- Manage ORV use to allow for a variety of visitor use experiences;
- Minimize conflicts between ORV use and other uses;
- Ensure that ORV management promotes the safety of all visitors;
- Identify operational needs and costs to fully implement an ORV management plan;
- Identify potential sources of funding necessary to implement an ORV management plan;
- Provide consistent guidelines, according to site conditions, for ORV routes, ramps, and signage;
- Identify criteria to designate ORV use areas and routes;
- Establish ORV management practices and procedures that have the ability to adapt in response to changes in the Seashore's dynamic physical and biological environment;
- Establish a civic engagement component for ORV management;
- Establish procedures for prompt and efficient public notification of beach access status, including any temporary ORV use restrictions, for such things as ramp maintenance, resource and public safety closures, storm events, etc;
- Build stewardship through public awareness and understanding of NPS resource management and visitor use policies and responsibilities as they pertain to the Seashore and ORV management.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Cape

Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954. *Telephone:* (252) 473–2111 ext. 148.

SUPPLEMENTARY INFORMATION: Under the selected action, the NPS will propose a special regulation based on the ROD that provides a balanced distribution of beach miles designated as ORV routes and vehicle-free areas, while providing for the protection of park resources. Driving will be prohibited off-road in the Seashore except on designated routes, and an ORV permit, with a short educational component, will be required for ORV operators. To operate off-road, ORVs must meet required vehicle characteristics and carry required equipment. The NPS will implement measures for pedestrian safety. When carrying capacity is reached or exceeded on an ORV route, it will be temporarily closed to additional vehicles. To support access to both vehicle-free areas and designated ORV routes, the NPS will construct new parking areas and pedestrian access trails, new or relocated ORV ramps, and improvements and additions to the interdunal road system. The Superintendent may issue a special use permit in certain limited circumstances for ORV use in vehicle-free areas. Vehicles operated off-road under the terms of a commercial fishing permit or commercial use authorization (CUA) issued by the superintendent would not require a separate ORV permit.

The NPS will manage for protected species using the measures identified in the Final EIS. These include pre-nesting closures and standard buffers for shorebirds and night driving restrictions during the sea turtle nesting season. The NPS will employ periodic review and an adaptive management strategy, using monitoring and the systematic evaluation of results to determine if adjustments in management are necessary to reach the desired future condition for the threatened, endangered, state-listed, and special status species as described in the FEIS.

The ROD briefly discusses the selected action, five other alternatives considered, the basis for the decision, and measures to minimize impacts and address public concerns. The requisite no-action "wait period" before approval of the ROD was initiated November 19, 2010 with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS. As soon as practicable after the publication of the Notice of Availability and Summary of the ROD in the **Federal Register**, the Seashore will publish in the Federal Register for public comment a proposed special regulation to designate ORV routes and regulate the use of ORVs in the Seashore. The ROD is not the final agency action for those elements of the plan that require promulgation of a regulation to be effective; promulgation of the regulation will constitute the final agency action for such elements of the plan. Moreover, the Seashore will not begin to implement the selected action until after promulgation of the final special regulation. Once the final special regulation is in effect, the Seashore will implement the selected action, as described in the preferred alternative (alternative F) presented in the final plan/EIS and in the ROD.

Interested parties desiring to review the ROD may access it on the NPS Planning, Environment and Public Comment Web site at *http://parkplanning.nps.gov/caha* or may obtain a copy by contacting Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954. *Telephone:* (252) 473–2111 ext. 148.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

The responsible official for this ROD is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Gordon Wissinger,

Acting Regional Director, Southeast Region, National Park Service.

[FR Doc. 2010–32549 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–X6–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES 10–54]

Odessa Subarea Special Study; Adams, Franklin, Grant, and Lincoln Counties, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for extension of the public comment period for the Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation is extending the comment period for the Odessa Subarea Special Study DEIS to January 31, 2011. The original notice of availability for the DEIS was published in the **Federal Register** on October 25, 2010. The public review period was originally scheduled to end on December 31, 2010 (75 FR 65503).

DATES: Written or e-mailed comments on the Draft EIS will be accepted through January 31, 2011.

ADDRESSES: Written comments on the Draft EIS may be submitted to Bureau of Reclamation, Columbia-Cascades Area Office, Attention: Charles Carnohan, Activity Manager, 1917 Marsh Road, Yakima, Washington 98901–2058. Comments may also be submitted electronically to *Odessa@usbr.gov.*

FOR FURTHER INFORMATION: Contact Charles Carnohan, Activity Manager, Telephone (509) 575–5848 x603. Information on this project can also be found at *http://www.usbr.gov/pn/programs/ucao_misc/odessa/index.html.*

SUPPLEMENTARY INFORMATION:

The Draft EIS is available for public inspection at the following locations:

- Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901–2058; *telephone:* (509) 575–5848.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, ID 83706–1234; *telephone:* (208) 378–5012.

Libraries

- Ritzville Public Library, 302 West Main, Ritzville, WA 99169.
- Basin City Branch, Mid-Columbia Library, Basin City, WA 99343.
- Benton-Franklin County Regional Law Library, Columbia Basin College, L Building, 2600 North 10th Avenue, Pasco, WA 99301.
- Big Bend Community College Library, Building 1800, 7611 Bolling Street, NE., Moses Lake, WA 98837.
- Columbia Basin College Library, 2600 North 20th Avenue, Pasco, WA 99301.
- Connell Branch, Mid-Columbia Library, 118 North Columbia Avenue, Connell, WA 99362.
- Coulee City Public Library, 405 West Main Street, Coulee City, WA 99115.
- Ephrata City Library, 45 Alder Street Northwest, Ephrata, WA 98823–2420.
- Grant County Law Library, 35 C Street, NW., Ephrata, WA 98823.
- Kahlotus Branch, Mid-Columbia Library, East 225 Weston, Kahlotus, WA 99335.
- Moses Lake Community Library, 418 East 5th Avenue, Moses Lake, WA 98837–1797.
- Odessa Public Library, 21 East 1st Avenue, Odessa, WA 99159.
- Othello Branch, Mid-Columbia Library, 101 East Main, Othello, WA 99344.

• Pasco Branch, Mid-Columbia Library, 1320 West Hopkins, Pasco, WA 99301.
• Quincy Public Library, 108 B Street Southwest, Quincy, WA 98848.
• North Central Regional Library, Royal City Library, 136 Camelia Street, Royal City, WA 99357.
• Seattle Public Library, Central Library, 1000 Fourth Avenue, Seattle, WA 98104.
• Sprague Public Library, 119 West Second Street, Sprague, WA 99032.
• North Central Regional Library, Warden Library, 305 South Main Street, Warden WA 98857.
• Washington State Library, 6880 Capitol Boulevard South, Olympia, WA 98504.

Public Disclosure Statement

If you wish to comment, you may mail or e-mail your comments as indicated under the **ADDRESSES** section. Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can request in your comment for us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Karl E. Wirkus,

Regional Director, Pacific Northwest Region.

[FR Doc. 2010–32525 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Long-Term North to South Water Transfer Program, Sacramento County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of scoping meetings.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation) and the San Luis & Delta-Mendota Water Authority propose to prepare a joint EIS/EIR to analyze the effects of water transfers from water agencies in northern California to water agencies south of the Sacramento-San Joaquin Delta (Delta) and in the San Francisco Bay Area. The EIS/EIR will address transfers of Central Valley Project (CVP) and non-CVP water supplies that require use of CVP or State Water Project (SWP) facilities to convey the transferred water. Water transfers would occur through various methods, including, but not limited to, groundwater substitution and cropland idling, and would include individual and multiyear transfers from 2012 through 2022.

DATES: Submit written comments on the scope of the Long-Term Water Transfer Program by February 28, 2011.

Three public scoping meetings have been scheduled:

• Tuesday, January 11, 2011, 6–8 p.m., Chico, CA.
• Wednesday, January 12, 2011, 2–4 p.m., Sacramento, CA.
• Thursday, January 13, 2011, 6–8 p.m., Los Banos, CA.

ADDRESSES: Send written comments on the scope of the Long-Term Water Transfer Program or issues to be addressed in the EIS/EIR to Mr. Brad Hubbard, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, CA 95825.

Scoping meetings will be held at:

• Chico at the Chico Masonic Family Center, 1110 W. East Avenue.
• Sacramento at the Best Western Expo Inn & Suites, 1413 Howe Avenue.
• Los Banos at the San Luis & Delta-Mendota Water Authority, 842 Sixth Street.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hubbard, Project Manager, Bureau of Reclamation, via e-mail at *bhubbard@usbr.gov* or at 916–978–5204, or Ms. Frances Mizuno, Assistant Executive Director, San Luis & Delta-Mendota Water Authority, via e-mail at *frances.mizuno@sldmwa.org* at 209–832–6200.

SUPPLEMENTARY INFORMATION: Due to dry hydrological conditions, priority of rights, competing needs, and low reservoir storage levels, water agencies south of the Delta have been using water transfers to supplement local and imported water supplies. Transfers of CVP supplies and transfers that require use of CVP or SWP facilities are subject to review by Reclamation and/or DWR in accordance with the Central Valley Project Improvement Act of 1992, Reclamation's water transfer guidelines, and California State law. Pursuant to Federal and State law and subject to separate written agreement, Reclamation and DWR would facilitate water transfers involving CVP contract water supplies and CVP and SWP facilities. Buyers and sellers would be responsible for negotiating the terms of the transfers, including amount of water for transfer, method to make water available, and price.

The EIS/EIR will identify potential selling parties in northern California, methods by which water could be made available for transfer, and maximum amounts of water available through each method. The EIS/EIR will also identify potential purchasing agencies south of the Delta and the proposed use of transfer water.

The EIS/EIR will investigate alternative transfer methods to make water available. Groundwater substitution and cropland idling have been frequent transfer mechanisms in the past and will be analyzed in the EIS/EIR. Groundwater substitution transfers occur when sellers forego diversion of their surface water supplies and pump an equivalent amount of groundwater as an alternative supply. The purchasing agency would receive the foregone surface water supply. The quantity of water available for transfer would account for potential stream flow losses as a result of groundwater-surface water interaction. Cropland idling would make water available for transfer that would have been used for agricultural irrigation without the transfer. Typically, the proceeds from the water transfer would pay farmers to idle land that they would have placed in production. Rice has been the crop idled most frequently in previous transfer programs.

Water transfers under the Proposed Action involving conveyance through the Delta would be implemented within the operational parameters of the Biological Opinions on the Continued Long-term Operations of the CVP/SWP and any other regulatory restrictions in place at the time of implementation of the water transfers. Current operational parameters applicable to the transfer water include:

• Conveyance of a maximum of 600,000 acre feet per year; and

• Use of the SWP's Harvey O. Banks Pumping Plant and CVP's C.W. "Bill" Jones Pumping Plant during July through September only.

The EIS/EIR is expected to analyze the adverse and beneficial effects of implementing water transfers on the following environmental resources: Surface water, water quality, groundwater, fisheries, vegetation and wildlife, special status species, geology and soils, land use, air quality, climate change, cultural resources, noise, recreation, energy, visual resources, socioeconomics, and Indian trust assets. The EIS/EIR will also evaluate environmental justice and cumulative impacts associated with the Long-Term Water Transfer Program.

Special Assistance for Public Meetings

If special assistance is required to participate in the scoping meeting, please contact Mr. Louis Moore at 916–978–5106 or via e-mail at *wmoore@usbr.gov.* Please contact Mr. Moore at least ten working days prior to the meeting. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us, in your comment, to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 12, 2010.

Anastasia T. Leigh,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2010–32583 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Hydropower Resource Assessment at Existing Reclamation Facilities—Draft Report

AGENCIES: Bureau of Reclamation, Interior.

ACTION: Reopening of comment period for review of the Hydropower Resource Assessment at Existing Reclamation Facilities Draft Report (HRA).

SUMMARY: The Bureau of Reclamation is reopening the review period for the HRA for another 30 days from the date of publication of this Notice. The notice of availability of the HRA was published in the **Federal Register** on November 4, 2010 (75 FR 67993). The public review period was originally to end on December 6, 2010.

DATES: Submit written comments on the Draft Report on or before January 27, 2011.

ADDRESSES: Send written comments or requests for copies to Mr. Michael Pulskamp, Bureau of Reclamation, Denver Federal Center, Bldg. 67, P.O. Box 25007, Denver, Colorado 80225, or e-mail to *mpulskamp@usbr.gov*.

The Draft Report is also accessible from the following Web site: *http://www.usbr.gov/power/*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pulskamp, 303–445–2931, *mpulskamp@usbr.gov*.

SUPPLEMENTARY INFORMATION: The Administration is committed to increasing the generation of environmentally sustainable, affordable hydropower for our national electricity supplies. Reclamation has 476 dams and 8,116 miles of canals, and owns and operates 58 hydropower plants. On an annual basis, these plants produce an average of 40 billion kilowatt hours of electricity, enough to meet the entire electricity needs of over 9 million people on average, and provide the energy equivalent of more than 80 million barrels of crude oil or about 48.4 billion pounds of coal. Reclamation is the second largest producer of hydroelectric power in the United States, and is actively engaged in looking for opportunities to encourage development of additional hydropower capacity.

In March 2010 Reclamation signed a Memorandum of Understanding (MOU) with the Department of Energy and the U.S. Army Corps of Engineers. The MOU focuses on ways to increase renewable energy generation by focusing on development of sustainable, low impact, and small hydropower projects. The MOU committed Reclamation to produce an updated list of facilities and sites best suited for projects to increase sustainable hydropower generation by October 2010. The HRA provides information on potential hydropower development at existing Reclamation facilities that may warrant further study.

The Draft Report does not make any recommendations for development of the sites included in the report. Instead, it provides an inventory of hydropower potential at existing Reclamation sites using broad energy and economic criteria. Reclamation is not undertaking a new dam construction initiative with this study, and is focused on identifying the hydropower potential of Reclamation's existing structures. This resource assessment level study does not take the place of a site by site feasibility study.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: *December 21, 2010.*

Michael R. Gabaldon,

Director, Technical Resources, Bureau of Reclamation.

[FR Doc. 2010–32660 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–729]

In the Matter of Certain Semiconductor Products Made by Advanced Lithography Techniques and Products Containing Same; Notice of Commission Decision Not to Review an Initial Determination Terminating The Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination ("ID") (Order No. 11) granting a joint motion to terminate the investigation as to one respondent on the basis of a settlement agreement, and terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 27, 2010, based on a complaint filed by STC.UNM (Albuquerque, New Mexico) ("STC"), alleging a violation of section 337 in the importation, sale for

importation, and sale within the United States after importation of certain semiconductor products made by advanced lithography techniques and products containing same, by reason of infringement of certain claims of U.S. Patent No. 6,042,998. 75 FR. 44,015 (July 27, 2010). The complaint named two respondents: Taiwan Semiconductor Manufacturing, Co., Ltd. (Taiwan) ("TSMC"); and Samsung Electronics Co., Ltd. (South Korea) ("Samsung"). On December 8, 2010, the Commission determined not to review Order No. 10, an ID that terminated the investigation as against Samsung on the basis of a settlement agreement.

On November 15, 2010, STC and TSMC filed a joint motion to terminate the investigation as against TSMC on the basis of a settlement agreement. On November 24, 2010, the Commission investigative attorney filed a response supporting the motion. On December 6, 2010, the ALJ granted the motion. Order No. 11. Because TSMC is the last respondent, termination against TSMC results in termination of the investigation.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

By order of the Commission.

Issued: December 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32515 Filed 12–27–10; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of The Judicial Conference Committee on Criminal Rules

AGENCY: Judicial Conference of the United States Advisory Committee on Criminal Rules.

ACTION: Notice of Cancellation of Open Hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure, has been canceled: Criminal Rules Hearing, January 5, 2011, I San Francisco, CA

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32415 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 7–8, 2011. *Time:* 8:30 a.m. to 5 p.m.

ADDRESSES: Fairmont Hotel, 950 Mason Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32437 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 6–7, 2011. *Time:* 8:30 a.m. to 5 p.m.

ADDRESSES: James R. Browning, United States Courthouse, Courtroom 5, 95 Seventh Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32439 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 6–7, 2011. *Time:* 8:30 a.m. to 5 p.m.

ADDRESS: Fairmont Hotel, 950 Mason Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32438 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 4–5, 2011. *Time:* 8:30 a.m. to 5 p.m.

ADDRESS: The University of Texas School of Law, 727 East Dean Keeton Street, Austin, TX 78705.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary Rules

Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32435 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: April 1, 2011. *Times:* 8:30 a.m. to 5 p.m.

ADDRESS: University of Pennsylvania, Law School, 3400 Chestnut Street, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32433 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 11–12, 2011. *Time:* 8:30 a.m. to 5 p.m.

ADDRESS: United States Court of Appeals, Pioneer Courthouse, 700 SW. Sixth Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 21, 2010.

Peter G. McCabe,

Rules Committee Support Office.

[FR Doc. 2010–32434 Filed 12–27–10; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0074]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: List of Responsible Persons.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207, page 66132 on October 27, 2010 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* List of Responsible Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. *Abstract:* All persons holding ATF explosives licenses or permits must report any change in responsible persons or employees authorized to possess explosive materials to ATF. Such report must be submitted within 30 days of the change and must include appropriate identifying information for each responsible person.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents who will take 1 hour to complete the report.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 100,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32685 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0055]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Identification of Explosive Materials.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207, page 66137 on October 27, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* The regulations at 27 CFR 555.109 require that manufacturers of explosive materials place marks of identification on the materials manufactured. Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,563 respondents who will respond to this information collection. Estimated time for a respondent to respond is none. Because the manufacturers are required to place markings on explosives, the burden hours are considered usual and customary. 5 CFR 1320.3(b)(2) states, there is no burden when the collection of information is usual and customary.

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated annual total burden hours associated with this collection is 1 hour.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32693 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB No. 1140–0045]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: permanent provisions of the Brady Handgun Violence Prevention Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 205, page 65510 on October 25, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Permanent Provisions of the Brady Handgun Violence Prevention Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The information collection is submitted to implement the permanent provisions of the Brady Law. These provisions provide for the establishment of a national instant criminal background check system (NICS) which requires that a firearms licensee must contact NICS before transferring any firearm to unlicensed individuals. Section 478.150 provides for an alternative to NICS in certain geographical locations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 106,000 respondents will comply with the provisions of the Brady Handgun Violence Prevention Act.

(6) *An estimate of the total burden (in hours) associated with the collection:* Since 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. Therefore, the total annual burden associated with this information collection is 1 hour.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32687 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0079]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: transactions Among Licensee/Permittees and Transactions Among Licensees and Holders of User Permits.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207, page 66133 on October 27, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensee/Permittees and Transactions Among Licensees and Holders of User Permits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* The Safe Explosives Act requires that an explosives distributor must verify the identity of the purchaser; an explosives purchaser must provide a copy of the license/permit to the distributor prior to the purchase of explosive materials; possessors of explosive materials must provide a list of explosive storage locations; purchasers of explosive materials must provide a list of representatives authorized to purchase on behalf of the distributor; and an explosive purchaser must provide a statement of intended use of the explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will take 30 minutes to comply with the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 25,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32682 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB No. 1140–0080]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: notification of change of mailing or premise address.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207, page 66133 on October 27, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit Institutions. *Other:* Business or other for-profit. *Abstract:* Licensees and permittees whose mailing address will change must notify the Chief, Federal Explosives Licensing Center, at least 10 days before the change. The information is used by ATF to identify correct locations of storage of explosives licensees/permittees and location of storage of explosive materials for purposes of inspection, as well as to notify permittee/licensees of any change in regulations or laws that may affect their business activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,000 respondents, who will take 10 minutes to respond via letter to the Federal Explosives Licensing Center.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 170 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32679 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0082]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Correction to OMB Control Number in 60 day notice. 30-Day Notice of Information Collection Under Review: Certification of Knowledge of State Laws, Submission of Water Pollution Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207, page 66134 on October 27, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Knowledge of State Laws, Submission of Water Pollution Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. *Abstract:* Persons who apply for a permit to purchase explosives intrastate must certify in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business and submit the certificate required by section 21 of the Federal Water Pollution Control Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, will take an estimated time of 30 seconds to submit the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 416 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32676 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0083]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Application for Limited Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207 page 66135 on October 27, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Limited Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* Any person who intends to acquire explosive materials from a licensee or permittee in the State in which that person resides on no more than 6 occasions per year, must obtain a limited permit from ATF.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 40,000 respondents will take 30 seconds to submit the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 2,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32673 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0089]

Agency Information Collection Activities:

Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Open Letter to States With Permits That Appear to Qualify as Alternatives to NICS Checks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 207 page 66135 on October 27, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395–7285.

Comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Open Letter to States With Permits That Appear to Qualify as Alternatives to NICS Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(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 purpose of this information collection is to ensure that only State permits that meet the statutory requirements contained in the Gun Control Act qualify as alternatives to a National Instant Criminal Background Check System (NICS) check.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 21 respondents, who will take 1 hour to prepare a written response to ATF.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 21 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32670 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—United Negro College Fund Special Programs Research and Development Consortium

Notice is hereby given that, on November 29, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), United Negro College Fund Special Programs Research and Development Consortium ("UNCFSP–RDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are: Alabama A&M University, Normal, AL; Alabama State University, Montgomery, AL; Albany State University, Albany, GA; Alcorn State University, Alcorn State, MS; Benedict College, Columbia, SC; California State University at Fullerton, Fullerton, CA; California State University at San Bernardino, San Bernardino, CA; Cheyney University of Pennsylvania, Cheyney, PA; Claflin University, Orangeburg, SC; Clark-Atlanta University, Atlanta, GA; Delaware State University, Dover, DE; Dillard University, New Orleans, LA; Edward Waters College, Jacksonville, FL; Elizabeth City State University, Elizabeth City, NC; Grambling State University, Grambling, LA; Jackson State University, Jackson, MS; Jarvis Christian College, Hawkins, TX; Johnson C. Smith University, Charlotte, NC; Langston University, Langston, OK; Lincoln University of Missouri, Jefferson City, MO; Morehouse College, Atlanta, GA; Morgan State University, Baltimore, MD; North Carolina A&T State University, Greensboro, NC; Oakwood University, Huntsville, AL; Polytechnic University of Puerto Rico, San Juan, Puerto Rico; San Francisco University, San Francisco, CA; Savannah State University, Savannah, GA; South Carolina State University, Orangeburg, SC; Southern University, Baton Rouge, LA; Spelman College, Atlanta, GA; Texas Southern University, Houston, TX; Tougaloo College, Tougaloo, MS; United Negro College Fund Special Programs Corporation,

Falls Church, VA; University of Arkansas at Pine Bluff, Pine Bluff, AR; University of Texas at El Paso, El Paso, TX; Voorheese College, Denmark, SC; Wilberforce University, Wilberforce, OH; and Winston-Salem State University, Winston-Salem, NC.

The general area of UNCFSP–RDC's planned activity is: (a) conduct research and development activities that advance the state-of-the-art as well as the scientific, technology, engineering and mathematical skills in the fields that are needed to develop and transition new technologies for national defense, homeland security, medicine, energy and space; (b) to enter into a Section 845 "Other Transactions" Agreement with the U.S. Army (the "Government") for the funding of certain research and development to be conducted, in partnership with the Government, the Consortium and other Consortium Members, to enhance the capabilities of the U.S. Government and its departments and agencies in the fields utilizing science, technology, engineering and mathematics; (c) to increase the competitiveness of Historically Black Colleges and Universities and Other Minority Institutions including Hispanic Serving Institutions, Tribal Colleges and Universities and Other Minority Serving Institutions in Government research and development programs by partnering and collaborating with each other and the Government laboratories; (d) to provide a unified and coordinated message to the U.S. Government's Legislative Branch and the Departments of Defense, Homeland Security, Energy, and Health and Human Services and NASA as to the strategic importance of HBCUs and MIs in Federal research and development; and (e) to define programs and obtain program funding that is focused on the development of this under utilized national asset that will result in improvements or new research and development in all the sciences.

Additional information concerning the UNCFSP–RDC can be obtained from Mr. Darold L. Griffin, Organization Committee, UNCFSP–RDC, in care of Engineering and Management Executive, Inc. (EME), 101 South Whiting Street, Suite 204, Alexandria, VA 22304–3416, telephone (703) 212–8030, Ext. 224, fax (703) 212–8035, e-mail: *emelbmt@aol.com;* Mr. Michael J. Hester, Vice President, UNCF Special Programs Corporation, 6402 Arlington Boulevard, Suite 600, Falls Church, VA 22042, telephone (703) 205–8133, fax (703) 205–7651, e-mail: *michael.hester@uncfsp.org;* or Dr. James J. Valdes (PhD), Scientific Advisor for Biotechnology, U.S. Army Edgewood Chemical and Biological Center, ATTN: RDCB–DR, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21020–5424, telephone (410) 436–1396, fax (410) 436–3930, e-mail: *james.valdes@us.army.mil.*

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2010–32430 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Lucasfilm Ltd.;* Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Lucasfilm Ltd.,* Civil Case No. 1:10–cv–02220. On December 21, 2010, the United States filed a Complaint alleging that Lucasfilm Ltd. and Pixar entered into an agreement, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, in which they agreed not to actively solicit each other's highly skilled digital animators and other employees, to notify each other when making an offer to an employee of the other company, and that the company making an offer to the other company's employee would not counteroffer above its initial offer. The proposed Final Judgment, filed the at same time as the Complaint, requires Lucasfilm to refrain from entering into similar agreements in the future.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530 (telephone: 202–307–6200).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, *Plaintiff,* v. Lucasfilm Ltd., 1110 Gorgas Avenue, San Francisco, CA 94129, *Defendant.*
Case: 1:10–cv–02220.
Assigned To: Walton, Reggie B.
Assign. Date: 12/21/2010.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendant Lucasfilm Ltd. ("*Lucasfilm*"), alleging as follows:

Nature of the Action

This action challenges under Section 1 of the Sherman Act an agreement between Lucasfilm and Pixar that restrained competition between them for highly skilled digital animators.

Lucasfilm and Pixar compete for highly skilled digital animators and solicit employees at other digital animation studios to fill employment openings. Lucasfilm and Pixar entered into an agreement not to cold call, not to make counteroffers under certain circumstances, and to provide notification when making employment offers to each other's employees. This agreement reduced Lucasfilm's and Pixar's ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. This agreement is facially anticompetitive. It eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

Lucasfilm and Pixar's agreement is a restraint of trade that is per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1. The United States seeks an order prohibiting such an agreement.

Jurisdiction and Venue

Lucasfilm hires specialized digital animators throughout the United States, and sells completed digital animation

films throughout the United States. Such activities, including the recruitment and hiring activities at issue in this Complaint, are in the flow of and substantially affect interstate commerce. The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. 4, and under 28 U.S.C. 1331 and 1337 to prevent and restrain Lucasfilm from violating Section 1 of the Sherman Act, 15 U.S.C. 1.

Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(2), (c). Lucasfilm transacts or has transacted substantial business here.

Defendant

6. Lucasfilm is a California corporation with its principal place of business in San Francisco, California.

Trade and Commerce

12. Digital animation labor is characterized by expertise and specialization. Lucasfilm and Pixar compete for digital animators on the basis of salaries, benefits, and career opportunities. In recent years, talented digital animation employees have been in high demand.

13. Although Lucasfilm and Pixar employ a variety of recruiting techniques, cold calling another studio's employees is an effective method of competing for digital animators. Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening. Lucasfilm and Pixar frequently recruit employees by cold calling because other studios' employees have the specialized skills necessary for the vacant position and may be unresponsive to other methods of recruiting.

14. Lucasfilm and Pixar also aggressively bid against other digital animation studios for the services of talented employees and prospective employees. When the labor market is functioning without illegal competitive restraints, savvy employees can use these studios' aggressive tactics to extract multiple rounds of bidding, thus increasing their eventual salaries.

15. In a well-functioning labor market, employers compete to attract the most valuable talent for their needs. Lucasfilm's and Pixar's behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. Lucasfilm's and Pixar's agreement not to cold call, not to make counter offers under certain circumstances, and to provide notification when making employment offers is facially anticompetitive. It eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

The Unlawful Agreement

16. Beginning no later than January 2005, Lucasfilm and Pixar agreed to a protocol regarding the recruitment of each other's employees. The agreement included three requirements: (1) That the firms not cold call each other's employees; (2) that the firms notify each other when making an offer to an employee of the other firm; and (3) that the firm making an offer to the other firm's employee not counteroffer above its initial offer.

17. This agreement was not ancillary to any legitimate collaboration between Lucasfilm and Pixar. Senior executives at Lucasfilm and Pixar reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

18. The agreement between Lucasfilm and Pixar covered all digital animators and other employees and was not limited by geography, job function, product group, or time period. Moreover, employees did not agree to this restriction.

19. In furtherance of this agreement, Pixar drafted the terms of the agreement with Lucasfilm and communicated those written terms to Lucasfilm. Both firms internally communicated the agreement to management and select employees with hiring or recruiting responsibilities.

20. Lucasfilm and Pixar, through their senior executives, policed potential breaches of the agreement. For example, twice in 2007, Pixar complained to Lucasfilm about recruiting efforts Lucasfilm had made. Complaints about breaches of the agreement led the parties to modify their conduct going forward to conform to the agreement.

Violation Alleged

(Violation of Section 1 of the Sherman Act)

21. The United States hereby incorporates paragraphs 1 through 20.

22. Lucasfilm is a direct competitor to Pixar for digital animators and other employees covered by the agreement at issue here. Lucasfilm's behavior both reduced its ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. This agreement is facially anticompetitive because it eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

23. Lucasfilm's agreement constitutes an unreasonable restraint of trade that is per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

Requested Relief

The United States requests that the Court:

(A) Adjudge and decree that Lucasfilm's agreement not to compete constitutes an illegal restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act;

(B) Enjoin and restrain Lucasfilm from enforcing or adhering to existing agreements that unreasonably restrict competition for employees;

(C) Permanently enjoin and restrain Lucasfilm from establishing any similar agreement unreasonably restricting competition for employees except as prescribed by the Court;

(D) Award the United States such other relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to dissipate the anticompetitive effects of the illegal agreements entered into by Lucasfilm; and

(E) Award the United States the costs of this action.

Dated this 21st day of December 2010.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

Christine A. Varney,
Assistant Attorney General, DC Bar #411654.
Molly S. Boast,
Deputy Assistant Attorney General.
Katherine S. Forrest,
Deputy Assistant Attorney General.
Patricia A. Brink,
Director of Civil Enforcement,
James J. Tierney, Chief,
Networks and Technology Section, DC Bar #434610.
Scott A. Scheele, Assistant Chief,
Networks and Technology Section, DC Bar #429061.
Adam T. Severt,
Ryan S. Struve (*DC Bar #495406*),
Jessica N. Butler-Arkow (*DC Bar #430022*),
H. Joseph Pinto III,
Anthony D. Scicchitano,
Trial Attorneys.
U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

Telephone: (202) 307–6200.
Facsimile: (202) 616–8544.
adam.severt@usdoj.gov.

Certificate of Service

I, Adam Severt, hereby certify that on December 21, 2010, I caused a copy of the Complaint to be served on Defendant Lucasfilm by mailing the document via e-mail to the duly authorized legal representatives of the defendant, as follows:

FOR DEFENDANT LUCASFILM, LTD.,
Claudia R. Higgins, Esq.,
Kaye Scholer LLP,
901 Fifteenth Street, NW., Washington, DC 20005.
Adam T. Severt,
Trial Attorney, Networks & Technology Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.
Telephone: (202) 307–6200.
Fax: (202) 616–8544.
E-mail: adam.severt@usdoj.gov.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, *Plaintiff,* v. Lucasfilm Ltd., 1110 Gorgas Avenue, San Francisco, CA 94129, *Defendant.*
Case: 1:10–cv–02220.
Assigned To: Walton, Reggie B.
Assign. Date: 12/21/2010.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States brought this lawsuit against Defendant Lucasfilm Ltd. ("Lucasfilm") on December 21, 2010, to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that Lucasfilm entered an agreement with Pixar, pursuant to which each agreed to restrict certain employee recruiting practices. The effect of this agreement was to reduce competition for highly-skilled digital animators and other employees, diminish potential employment opportunities for those same employees, and interfere in the proper functioning of the price-setting mechanism that would otherwise have prevailed. The agreement is a naked restraint of trade and violates Section 1 of the Sherman Act, 15 U.S.C. 1.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which would remedy the violation by having the Court declare the agreement illegal, enjoin Lucasfilm from enforcing any such agreements currently in effect, and prohibit Lucasfilm from entering similar agreements in the future. The United States has sought a similar proposed Final Judgment against Pixar in a separate civil action, *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629, 75 FR 60820, 60828–30 (D.D.C. filed Sept. 24, 2010). The United States and Lucasfilm have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

Lucasfilm and Pixar are rival digital animation studios. Beginning no later than January 2005, Lucasfilm and Pixar agreed to a three-part protocol that restricted recruiting of each other's employees. First, Lucasfilm and Pixar agreed they would not cold call each other's employees. Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening. Second, they agreed to notify each other when making an offer to an employee of the other firm. Third, they agreed that, when offering a position to the other company's employee, neither would counteroffer above the initial offer.

The protocol covered all digital animators and other employees of both firms and was not limited by geography, job function, product group, or time period. Senior executives at the two firms agreed on the protocol through direct and explicit communications. In furtherance of this agreement, Pixar drafted the terms of the agreement with Lucasfilm and communicated those written terms to Lucasfilm. Both firms communicated the agreement to management and select employees with hiring or recruiting responsibilities. Twice in 2007, Pixar complained to Lucasfilm about recruiting efforts Lucasfilm had made. Complaints about breaches of the agreement led the two firms to alter their conduct going forward to conform to the agreement.

Lucasfilm's and Pixar's agreed-upon protocol disrupted the competitive market forces for employee talent. It eliminated a significant form of competition to attract digital animation employees and other employees covered by the agreement. Overall, it substantially diminished competition to the detriment of the affected employees who likely were deprived of information and access to better job opportunities.

The agreement was a naked restraint of trade that was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

III. The Agreement Was a Naked Restraint and Not Ancillary To Achieving Legitimate Business Purposes

Section 1 of the Sherman Act outlaws "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States." 15 U.S.C. 1. The Sherman Act is designed to ensure "free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress * * *." *National Collegiate Athletic Ass'n* v. *Board of Regents of Univ. of Okla.,* 468 U.S. 85, 104 n.27 (1984) (quoting *Northern Pac. Ry.* v. *United States,* 356 U.S. 1, 4–5 (1958)).

The law has long recognized that "certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pac. Ry.,* 356 U.S. at 545; *accord, Catalano, Inc.* v. *Target Sales, Inc.,* 446 U.S. 643, 646 n.9 (1980). Such naked restraints of competition among horizontal competitors (*i.e.,* agreements that have a pernicious effect on competition with no redeeming virtue) are deemed per se unlawful.

The United States has previously challenged restraints on employment as per se illegal. In September 2010, the United States filed suit charging six high technology firms with a per se violation of Section 1 for entering bilateral agreements to prohibit each firm from cold calling the other firm's employees. *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629, Complaint, 75 FR 60822 (D.D.C. filed Sept. 24, 2010); Competitive Impact

Statement, 75 FR 60823 (D.D.C. filed Sept. 24, 2010).

The restraint challenged here is broader than the no cold call restraints challenged in *United States* v. *Adobe Systems, Inc.* The prohibition on counteroffers by non-employing firms renders the Lucasfilm-Pixar agreement, taken as a whole, more pernicious than an agreement to refrain from cold-calling, and is per se unlawful. *See National Soc'y of Prof. Engineers* v. *United States,* 435 U.S. 679, 695 (1978); *Harkins Amusement Enterprises, Inc.* v. *General Cinema Corp.,* 850 F.2d 477, 487 (9th Cir. 1988).

Prior to *United States* v. *Adobe Systems, Inc.,* the United States brought a per se challenge in 1996 to employment restraints contained within guidelines designed to curb competition between residency programs for senior medical students and residents of other programs. Members of the Association of Family Practice Residency Directors had agreed not to directly solicit residents from each other, conduct recognized as "per se unlawful" under Section 1. *United States* v. *Association of Family Practice Residency Doctors,* No. 96–575–CV–W–2, Complaint at 6 (W.D.Mo. May 28, 1996); Competitive Impact Statement, 61 FR 28891, 28894 (W.D.Mo. May 28, 1996). The Court entered an agreed-upon Final Judgment, enjoining the association from restraining competition among residency programs for residents, including enjoining all prohibitions on direct and indirect solicitation of residents from other programs. 1996–2 Trade Cases ¶ 71,533, 28894 (W.D.Mo. Aug. 15, 1996).

In analogous circumstances, the Sixth Circuit has held that an agreement among competitors not to solicit one another's customers was a per se violation of the antitrust laws. *U.S.* v. *Cooperative Theaters of Ohio, Inc.,* 845 F.2d 1367 (6th Cir. 1988). In that case, two movie theater booking agents agreed to refrain from actively soliciting each other's customers. Despite the defendants' arguments that they "remained free to accept *unsolicited* business from their competitors' customers," *id.* (emphasis in original), the Sixth Circuit found their "no-solicitation agreement" was "undeniably a type of customer allocation scheme which courts have often condemned in the past as a per se violation of the Sherman Act." *Id.* at 1373.

Antitrust analysis of downstream customer-related restraints applies equally to upstream monopsony restraints on employment opportunities. In 1991, the Antitrust Division brought an action against conspirators who competed to procure billboard leases and who had agreed to refrain from bidding on each other's former leases for a year after the space was lost or abandoned by the other conspirator. *United States* v. *Brown,* 936 F.2d 1042 (9th Cir. 1991) (affirming jury verdict convicting defendants of conspiring to restrain trade in violation of 15 U.S.C. 1). The agreement was limited to an input market (the procurement of billboard leases) and did not extend to downstream sales (in which the parties also competed). In affirming defendants' convictions, the appellate court held that the agreement was per se unlawful:

> The agreement restricted each company's ability to compete for the other's billboard sites. It clearly allocated markets between the two billboard companies. A market allocation agreement between two companies at the same market level is a classic per se antitrust violation.

Id. at 1045.

Allocation agreements cannot be distinguished from one another based solely on whether they involve input or output markets. Anticompetitive agreements in both input and output markets create allocative inefficiencies.[1] Hence, naked restraints on cold calling customers, suppliers, or employees are similarly per se unlawful.

Still, an agreement that would normally be condemned as a per se unlawful restraint on competition may nonetheless be lawful if it is ancillary to a legitimate procompetitive venture and reasonably necessary to achieve the procompetitive benefits of the collaboration. Ancillary restraints therefore are not per se unlawful, but rather evaluated under the rule of reason, which balances a restraint's procompetitive benefits against its anticompetitive effects.[2] To be considered "ancillary" under established antitrust law, however, the restraint must be a necessary or intrinsic part of the procompetitive collaboration.[3] Restraints that are broader than reasonably necessary to achieve the efficiencies from a business collaboration are not ancillary and are properly treated as per se unlawful.

Although Lucasfilm and Pixar have at times engaged in legitimate collaborative projects, the recruiting agreement into which they entered was not, under established antitrust law, properly ancillary to those collaborations. The agreement was not tied to any specific collaboration. The agreement extended to all employees at the firms, regardless of any employee's relationship to any collaboration. The agreement was not limited by geography, job function, product group, or time period. The agreement was not reasonably necessary for any collaboration and hence, not a legitimate ancillary restraint.

Lucasfilm's agreement with Pixar is per se unlawful under Section 1 of the Sherman Act. The two firms' concerted behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. The agreement is facially anticompetitive because it eliminated a significant form of competition to attract digital animators and other employees. Overall, it substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

---

[1] *See Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co., Inc.,* 549 U.S. 312, 321 (2007) ("Predatory-pricing and predatory-bidding are analytically similar. This similarity results from the close theoretical connection between monopoly and monopsony.")

[2] *See* generally Department of Justice, Antitrust Division, and Federal Trade Commission, *Antitrust Guidelines for Collaborations Among Competitors* § 1.2 (2000) ("*Collaboration Guidelines*"). *See also Major League Baseball* v. *Salvino,* 542 F.3d 290, 339 (2d Cir. 2008) (Sotomayor, J., concurring) ("a per se or quick look approach may apply * * * where a particular restraint is not reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture and serves only as a naked restraint against competition."); *Dagher* v. *Saudi Refining, Inc.,* 369 F.3d 1108, 1121 (9th Cir. 2004) ("reasonably necessary to further the legitimate aims of the joint venture"); *rev'd on other grounds sub nom. Texaco* v. *Dagher,* 547 U.S. 1, 8 (2006); *Rothery Storage & Van Co.* v. *Atlas Van Lines, Inc.,* 792 F.2d 210, 227 (DC Cir. 1986) ("the restraints it imposes are reasonably necessary to the business it is authorized to conduct"); *In re Polygram Holdings., Inc.,* 2003 WL 21770765 (F.T.C. 2003) (parties must prove that the restraint was "reasonably necessary" to permit them to achieve particular alleged efficiency), *aff'd, Polygram Holdings, Inc.* v. *F.T.C.,* 416 F.3d 29 (DC Cir. 2005).

[3] *See Rothery Storage & Van Co.,* 792 F.2d at 227 (national moving network in which the participants shared physical resources, scheduling, training, and advertising resources, could forbid contractors from free riding by using its equipment, uniforms, and trucks for business they were conducting on their own); *Salvino,* 542 F.3d at 337 (Sotomayor, J., concurring) (Major League Baseball teams created a formal joint venture to exclusively license, and share profits for, team trademarks, resulting in "decreased transaction costs, lower enforcement and monitoring costs, and the ability to one-stop shop. * * *" Such benefits "could not exist without the * * * agreements."); *Addamax* v. *Open Software Found.,* 152 F.3d 48 (1st Cir. 1998) (computer manufacturers formed nonprofit joint research and development venture to develop operating system; agreement on price to be paid for security software that was used by joint venture was ancillary to effort to develop a new system). *See also Collaboration Guidelines* at § 3.2 ("[I]f the participants could achieve an equivalent or comparable efficiency-enhancing integration through practical, significantly less restrictive means, then * * * the agreement is not reasonably necessary.").

IV. Explanation of the Proposed Final Judgment

The proposed Final Judgment sets forth (1) Conduct in which Lucasfilm may not engage; (2) conduct in which Lucasfilm may engage without violating the proposed Final Judgment; (3) certain actions Lucasfilm is required to take to ensure compliance with the terms of the proposed Final Judgment; and (4) oversight procedures the United States may use to ensure compliance with the proposed Final Judgment. Section VI of the proposed Final Judgment provides that these provisions will expire five years after entry of the proposed Final Judgment.

A. Prohibited Conduct

The proposed Final Judgment is substantially similar to that proposed in *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629, Proposed Final Judgment, 75 FR 60828–30 (D.D.C. Sept. 24, 2010). Section IV of the proposed Final Judgment preserves competition for employees by prohibiting Lucasfilm, and all other persons in active concert or participation with Lucasfilm with notice of the proposed Final Judgment, from agreeing, or attempting to agree, with another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. It also prohibits Lucasfilm from requesting or pressuring another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. These provisions prohibit agreements not to make counteroffers and agreements to notify each other when making an offer to each other's employee.

B. Conduct Not Prohibited

The Final Judgment does not prohibit all agreements related to employee solicitation and recruitment. Section V makes clear that the proposed Final Judgment does not prohibit "no direct solicitation provisions"[4] that are reasonably necessary for, and thus ancillary to, legitimate procompetitive collaborations.[5] Such restraints remain subject to scrutiny under the rule of reason.

Section V.A.1 does not prohibit no direct solicitation provisions contained in existing and future employment or severance agreements with Lucasfilm's employees. Narrowly tailored no direct solicitation provisions are often included in severance agreements and rarely present competition concerns. Sections V.A.2–5 also make clear that the proposed Final Judgment does not prohibit no direct solicitation provisions reasonably necessary for:

1. Mergers or acquisitions (consummated or unconsummated), investments, or divestitures, including due diligence related thereto;

2. Contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers;

3. The settlement or compromise of legal disputes; and

4. Contracts with resellers or OEMs; contracts with certain providers or recipients of services; or the function of a legitimate collaboration agreement, such as joint development, technology integration, joint ventures, joint projects (including teaming agreements), and the shared use of facilities.

Section V of the proposed Final Judgment contains additional requirements applicable to no direct solicitation provisions contained in these types of contracts and collaboration agreements. The proposed Final Judgment recognizes that Lucasfilm may sometimes enter written or unwritten contracts and collaboration agreements and sets forth requirements that recognize the different nature of written and unwritten contracts.

Thus, for written contracts, Section V.B of the proposed Final Judgment requires Lucasfilm to: (1) Identify, with specificity, the agreement to which the no direct solicitation provision is ancillary; (2) narrowly tailor the no direct solicitation provision to affect only employees who are anticipated to be directly involved in the arrangement; (3) identify with reasonable specificity the employees who are subject to the no direct solicitation provision; (4) include a specific termination date or event; and (5) sign the agreement, including any modifications to the agreement.

If the no direct solicitation provision relates to an oral agreement, Section V.C of the proposed Final Judgment requires Lucasfilm to maintain documents sufficient to show the terms of the no direct solicitation provision, including: (1) The specific agreement to which the no direct solicitation provision is ancillary; (2) an identification, with reasonable specificity, of the employees who are subject to the no direct solicitation provision; and (3) the no direct solicitation provision's specific termination date or event.[6]

The purpose of Sections V.B. and V.C. is to ensure that no direct solicitation provisions related to Lucasfilm's contracts with resellers, OEMs, and providers of services, and collaborations with other companies, are reasonably necessary to the contract or collaboration. In addition, the requirements set forth in Sections V.B and V.C of the proposed Final Judgment provide the United States with the ability to monitor Lucasfilm's compliance with the proposed Final Judgment.

Lucasfilm has a large number of routine consulting and services agreements that contain no direct solicitation provisions that may not comply with the terms of the proposed Final Judgment. To avoid the unnecessary burden of identifying these existing contracts and re-negotiating any no direct solicitation provisions, Section V.D of the proposed Final Judgment provides that, subject to the conditions below, Lucasfilm shall not be required to modify or conform existing no direct solicitation provisions included in consulting or services agreements to the extent such provisions violate this Final Judgment. The Final Judgment further prohibits Lucasfilm from enforcing any such existing no direct solicitation provision that would violate the proposed Final Judgment.

Finally, Section V.E of the proposed Final Judgment provides that Lucasfilm is not prohibited from unilaterally adopting or maintaining a policy not to consider applications from employees of another person, or not to solicit, cold call, recruit or hire employees of another person, provided that Lucasfilm does not request or pressure another person to adopt, enforce, or maintain such a policy.

C. Required Conduct

Section VI of the proposed Final Judgment sets forth various mandatory procedures to ensure Lucasfilm's compliance with the proposed Final Judgment, including providing officers, directors, human resource managers, and senior managers who supervise employee recruiting with copies of the

[4] Section II.C. of the proposed Final Judgment defines "no direct solicitation provision" as "any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person."

[5] The Complaint alleges a violation of the Sherman Antitrust Act, 15 U.S.C. 1. The scope of the Final Judgment is limited to violations of the Federal antitrust laws. It prohibits certain conduct and specifies other conduct that the Judgment would not prohibit. The Judgment does not address whether any conduct it does not prohibit would be prohibited by other Federal or State laws, including California Business & Professions Code § 16600 (prohibiting firms from restraining employee movement).

[6] For example, Lucasfilm might document these requirements through electronic mail or in memoranda that it will retain.

proposed Final Judgment and annual briefings about its terms. Section VI.A.5 requires Lucasfilm to provide its employees with reasonably accessible notice of the existence of all agreements covered by Section V.A.5 and entered into by the company.

Under Section VI, Lucasfilm must file annually with the United States a statement identifying any agreement covered by Section V.A.5., and describing any violation or potential violation of the Final Judgment known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. If one of these persons learns of a violation or potential violation of the Judgment, Lucasfilm must take steps to terminate or modify the activity to comply with the Judgment and maintain all documents related to the activity.

D. Compliance

To facilitate monitoring of Lucasfilm's compliance with the proposed Final Judgment, Section VII grants the United States access, upon reasonable notice, to Lucasfilm's records and documents relating to matters contained in the proposed Final Judgment. Lucasfilm must also make its employees available for interviews or depositions about such matters. Moreover, upon request, Lucasfilm must answer interrogatories and prepare written reports relating to matters contained in the proposed Final Judgment.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Lucasfilm.

VI. Procedures Applicable for Approval or Modification of the Proposed Final Judgment

The United States and Lucasfilm have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Lucasfilm. The United States is satisfied, however, that the relief contained in the proposed Final Judgment will quickly establish, preserve, and ensure that employees can benefit from competition between Lucasfilm and others. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. Standard of Review Under the APPA for Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the Defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").[7]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the

[7] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see* also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, "a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 *Cong. Rec.* 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: December 21, 2010.

Respectfully submitted,
Adam T. Severt,
Ryan S. Struve (DC Bar #495406),
Jessica N. Butler-Arkow (DC Bar #430022),
H. Joseph Pinto III,
Anthony D. Scicchitano,
Trial Attorneys.
U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.
Telephone: (202) 307–6200.
Facsimile: (202) 616–8544.
adam.severt@usdoj.gov.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, *Plaintiff,* v. Lucasfilm Ltd., 1110 Gorgas Avenue, San Francisco, CA 94129, *Defendant.*

[Proposed] Final Judgment

Whereas, the United States of America filed its Complaint on December 21, 2010, alleging that the Defendant participated in an agreement in violation of Section One of the Sherman Act, and the United States and the Defendant, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas this Final Judgment does not constitute any admission by the Defendant that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

And whereas, the Defendant agrees to be bound by the provisions of this Final

[8] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to 'look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' ").

[9] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Judgment pending its approval by this Court;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the Defendant, it is *ordered, adjudged, and decreed.*

I. Jurisdiction

This Court has jurisdiction over the subject matter and the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendant under Section One of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. "Lucasfilm" means Lucasfilm Ltd., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) directors, officers, managers, agents acting within the scope of their agency, and employees.

B. "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. "No direct solicitation provision" means any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person.

D. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

E. "Senior manager" means any company officer or employee above the level of vice president.

III. Applicability

This Final Judgment applies to Lucasfilm, as defined in Section II, and to all other persons in active concert or participation with Lucasfilm who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

The Defendant is enjoined from attempting to enter into, entering into, maintaining or enforcing any agreement with any other person to in any way refrain from, requesting that any person in any way refrain from, or pressuring any person in any way to refrain from soliciting, cold calling, recruiting, or otherwise competing for employees of the other person.

V. Conduct Not Prohibited

A. Nothing in Section IV shall prohibit the Defendant and any other person from attempting to enter into, entering into, maintaining or enforcing a no direct solicitation provision, provided the no direct solicitation provision is:

1. Contained within existing and future employment or severance agreements with the Defendant's employees;

2. Reasonably necessary for mergers or acquisitions, consummated or unconsummated, investments, or divestitures, including due diligence related thereto;

3. Reasonably necessary for contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers;

4. Reasonably necessary for the settlement or compromise of legal disputes; or

5. Reasonably necessary for (i) contracts with resellers or OEMs; (ii) contracts with providers or recipients of services other than those enumerated in paragraphs V.A. 1–4 above; or (iii) the function of a legitimate collaboration agreement, such as joint development, technology integration, joint ventures, joint projects (including teaming agreements), and the shared use of facilities.

B. All no direct solicitation provisions that relate to written agreements described in Section V.A.5.i, ii, or iii, that the Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall:

1. Identify, with specificity, the agreement to which it is ancillary;

2. Be narrowly tailored to affect only employees who are anticipated to be directly involved in the agreement;

3. Identify with reasonable specificity the employees who are subject to the agreement;

4. Contain a specific termination date or event; and

5. Be signed by all parties to the agreement, including any modifications to the agreement.

C. For all no direct solicitation provisions that relate to unwritten agreements described in Section V.A.5.i, ii, or iii, that the Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, the Defendant shall maintain documents sufficient to show:

1. The specific agreement to which the no direct solicitation provision is ancillary;

2. The employees, identified with reasonable specificity, who are subject to the no direct solicitation provision; and

3. The provision's specific termination date or event.

D. The Defendant shall not be required to modify or conform, but shall not enforce, any no direct solicitation provision to the extent it violates this Final Judgment if the no direct solicitation provision appears in the Defendant's consulting or services agreements in effect as of the date of this Final Judgment (or in effect as of the time the Defendant acquires a company that is a party to such an agreement).

E. Nothing in Section IV shall prohibit the Defendant from unilaterally deciding to adopt a policy not to consider applications from employees of another person, or to solicit, cold call, recruit or hire employees of another person, provided that the Defendant is prohibited from requesting that any other person adopt, enforce, or maintain such a policy, and is prohibited from pressuring any other person to adopt, enforce, or maintain such a policy.

VI. Required Conduct

A. The Defendant shall:

1. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty days of entry of the Final Judgment to its officers, directors, human resources managers, and senior managers who supervise employee recruiting, solicitation, or hiring efforts;

2. Furnish a copy of this Final Judgment and related Competitive Impact Statement to any person who succeeds to a position described in Section VI.A.1 within thirty days of that succession;

3. Annually brief each person designated in Sections VI.A.1 and VI.A.2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtain from each person designated in Sections VI.A.1 and VI.A.2, within 60 days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the Defendant; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against the Defendant and/or any person who violates this Final Judgment;

5. Provide employees reasonably accessible notice of the existence of all agreements covered by Section V.A.5 and entered into by the company; and

6. Maintain (i) a copy of all agreements covered by Section V.A.5; and (ii) a record of certifications received pursuant to this Section.

B. For five (5) years after the entry of this Final Judgment, on or before its anniversary date, the Defendant shall file with the United States an annual statement identifying and providing copies of any agreement and any modifications thereto described in Section V.A.5, as well as describing any violation or potential violation of this Final Judgment known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. Descriptions of violations or potential violations of this Final Judgment shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication.

C. If any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts of the Defendant learns of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, the Defendant shall promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant, subject to any legally recognized privilege, be permitted:

1. Access during the Defendant's regular office hours to inspect and copy, or at the option of the United States, to require the Defendant to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the Defendant's officers, employees, or agents, who may have their counsel, including any individual counsel, present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the Defendant shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendant to the United States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this court grants an extension, this Final Judgment shall expire five (5) years from the date of its approval by the Court.

X. Notice

For purposes of this Final Judgment, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as they may specify in writing to Lucasfilm):

Chief, Networks & Technology Enforcement Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the Procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this final judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16, United States District Judge.

[FR Doc. 2010–32601 Filed 12–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

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* or by contacting Michel Smyth by telephone at 202–693–

4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Patient Protection and Affordable Care Act (the Affordable Care Act) requires group health plans and health insurance insurers offering group or individual health insurance coverage that makes dependent coverage available for children to continue to make coverage available to such children until the attainment of age 26. Accordingly, the DOL issued an interim final regulation (29 CFR 2590.715–2714(f)) that requires plans to provide a notice of an enrollment opportunity to individuals whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or group health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26 years. The "Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits" is an 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 currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0143. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections 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 September 30, 2010 (75 FR 60482).

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 ensure the appropriate consideration, comments should reference OMB Control Number 1210–0143. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits.

OMB Control Number: 1210–0143.

Affected Public: Private sector: Businesses and other for profits and not for profits.

Total Estimated Number of Respondents: 315.

Total Estimated Number of Responses: 29,000.

Total Estimated Annual Burden Hours: 1300.

Total Estimated Annual Costs Burden: $7000.

Dated: December 21, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–32533 Filed 12–27–10; 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; Logging Operations Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Logging Operations Standard," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

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* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The logging operations standard requires employers to assure operating and maintenance instructions are available on machines or in the area where the machine is operated. For vehicles, employers must assure that operating and maintenance instructions are available for each vehicle. The standard also requires the employer to provide training to workers and to certify that they have provided this training.

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 currently 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 a penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0198. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections 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 October 15, 2010 (75 FR 63506).

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 ensure the appropriate consideration, comments should reference OMB Control Number 1218–0198. 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: Occupational Safety and Health Administration (OSHA).

Title of Collection: Logging Operations Standard.

OMB Control Number: 1218–0198.

Affected Public: Private sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 10,038.

Total Estimated Number of Responses: 113,507.

Total Estimated Annual Burden Hours: 25,957.

Total Estimated Annual Costs Burden: $0.

Dated: December 22, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–32598 Filed 12–27–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Overhead and Gantry Cranes Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Overhead and Gantry Cranes Standard," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

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* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collection provisions of the overhead and gantry cranes standard specify requirements for: Marking the rated load of cranes; preparing certification records to verify the inspection of the crane hooks, hoist chains, and rope; preparing reports of rated load test for repaired hooks or modified cranes. Records and reports must be maintained and disclosed upon request.

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 currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0224. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections 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 July 28, 2010 (75 FR 44288).

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 ensure the appropriate consideration, comments should reference OMB Control Number 1218–0224. 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: Occupational Safety and Health Administration (OSHA).

Title of Collection: Overhead and Gantry Cranes Standard.

OMB Control Number: 1218–0224.

Affected Public: Private sector: Businesses or other for profits.

Total Estimated Number of Respondents: 31,495.

Total Estimated Number of Responses: 643,007.

Total Estimated Annual Burden Hours: 321,380.

Total Estimated Annual Costs Burden: $0.

Dated: December 22, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–32599 Filed 12–27–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Advance Notice of Rescission

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Affordable Care Act Advance Notice of Rescission," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

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* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: 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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Patient Protection and Affordable Care Act (the Affordable Care Act) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and interim final regulations issued by the EBSA, a group health plan or a health insurance issuer offering group or individual health insurance coverage generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. Furthermore, coverage may not be cancelled unless prior notice is provided. Specifically, interim final regulations that EBSA has promulgated provide that a group health plan or a health insurance issuer offering group health insurance coverage must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group.

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 currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0141. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections 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 September 30, 2010 (75 FR 60482).

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 ensure the appropriate consideration, comments should reference OMB Control Number 1210–0141. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Affordable Care Act Advance Notice of Rescission.

OMB Control Number: 1210–0141.

Affected Public: Private sector: Businesses and other for profits and not for profits.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 1600.

Total Estimated Annual Burden Hours: 26.

Total Estimated Annual Costs Burden: $400.

Dated: December 21, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–32551 Filed 12–27–10; 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; Affordable Care Act Patient Protection Notice

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces submission of

the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Affordable Care Act Patient Protection Notice," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

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* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Patient Protection Notice is used by health plan sponsors and issuers to notify certain individuals of their right to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization.

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 currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0142. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections 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 September 30, 2010 (74 FR 60482).

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 ensure the appropriate consideration, comments should reference OMB Control Number 1210–0142. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Affordable Care Act Patient Protection Notice.

OMB Control Number: 1210–0142.

Affected Public: Business or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 261,680.

Total Estimated Number of Responses: 6,186,404.

Total Estimated Annual Burden Hours: 33,000.

Total Estimated Annual Costs Burden: $48,000.

Dated: December 20, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–32500 Filed 12–27–10; 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; Concrete and Masonry Construction Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Concrete and Masonry Construction Standard" to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

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* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *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 e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Construction firms engaged in the erection of concrete formwork are required to post warning signs/barriers in accordance with 29 CFR 1926.701(c)(2) to reduce exposure of non-essential employees to the hazards of post-tensioning operations. Paragraphs 29 CFR 1926.702(a)(2), (j)(1), and (j)(2) are general lockout/tagout measures to protect workers from injury associated with equipment and machinery. Paragraph 29 CFR 1926.703(a)(2) requires employers make available drawings or plans for jack

layout, formwork, working decks and scaffolds. Paragraph 1926.705(b) requires employers to mark the rated capacity of jacks and lifting units.

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 currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0095. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections 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 September 30, 2010 (75 FR 60480).

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 ensure the appropriate consideration, comments should reference OMB Control Number 1218–0095. 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: Occupational Safety and Health Administration (OSHA).

Title of Collection: Concrete and Masonry Standard.

OMB Control Number: 1218–0095.

Affected Public: Private sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 145,040.

Total Estimated Number of Responses: 145,040.

Total Estimated Annual Burden Hours: 11,603.

Total Estimated Annual Costs Burden: $0.

Dated: December 21, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–32597 Filed 12–27–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–171)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA seek to provide engaging experiences to the public to educate them about NASA technology that they use in their life and change their attitudes about NASA based on the interaction. Pre and post customer satisfaction surveys will be administered to measure the effectiveness of these efforts.

II. Method of Collection

Electronic.

III. Data

Title: NASA Exhibit Surveys.

OMB Number: 2700–xxxx.

Type of review: Regular.

Affected Public: Individuals or households, Federal Government.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Annual Burden Hours: 2000.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–32523 Filed 12–27–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–170)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Women in STEM High School Aerospace Scholars (WISH) is a pilot project for FY11. Applicants will apply voluntarily to be considered for this opportunity. This data collection is solely for identifying interested, qualified applications to participate in a multiple month online curriculum delivery and those who successfully complete the on-line curriculum will be invited to participate in a one-week experience at Johnson Space Center.

II. Method of Collection

Electronic.

III. Data

Title: Women in STEM High School Aerospace Scholars (WISH).

OMB Number: 2700–xxxx.

Type of review: Emergency.

Affected Public: Individuals or households.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Hours per Request: 1.

Annual Burden Hours: 50.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker

NASA PRA Clearance Officer.

[FR Doc. 2010–32524 Filed 12–27–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval to Reinstate an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by February 28, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Industry University Cooperative Research Centers Program (I/UCRC).

OMB Number: 3145–0088.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection.

Abstract:

Proposed Project:

The Industry/University Cooperative Research Centers (I/UCRC) Program was initiated in 1973 to develop long-term partnerships among industry, academe and government. The National Science Foundation invests in these partnerships to promote research programs of mutual interest, contribute to the Nation's research infrastructure base and enhance the intellectual capacity of the engineering or science workforce through the integration of research and education. As appropriate, NSF encourages international collaborations that advance these goals within the global context.

The I/UCRC program seeks to achieve this by:

1. Contributing to the nation's research enterprise by developing long-term partnerships among industry, academe, and government;

2. Leveraging NSF funds with industry to support graduate students performing industrially relevant research; and

3. Expanding the innovation capacity of our nation's competitive workforce through partnerships between industries and universities.

4. Encouraging the nation's research enterprise to remain competitive through active engagement with academic and industrial leaders throughout the world.

The centers are catalyzed by a small investment from NSF and they are primarily supported by other private and public sector center members, with NSF taking a supporting role in the development and evolution of the I/UCRC. The I/UCRC program initially offers five-year Phase I) continuing awards. This five-year period of support allows for the development of a strong partnership between the academic researchers and their industrial and government members. After five years, centers that continue to meet the I/UCRC program requirements may request support for a second five-year (Phase II) period. These awards allow centers to continue to grow and diversify their non-NSF memberships during their Phase II period. After ten years, a Phase III award provides a third five-year award for centers that demonstrate their viability, sustainability, and which have had a significant impact on industry research as measured through annual reports, site visits, and adherence to I/UCRC requirements. Centers are expected to be fully supported by industry, other Federal agencies, and state and local government partners after fifteen-years as an I/UCRC.

The centers are catalyzed by a small investment from NSF and they are primarily supported by other private and public sector center members, with NSF taking a supporting role in the

development and evolution of the I/UCRC. The I/UCRC program initially offers five-year Phase I) continuing awards. This five-year period of support allows for the development of a strong partnership between the academic researchers and their industrial and government members. After five years, centers that continue to meet the I/UCRC program requirements may request support for a second five-year (Phase II) period. These awards allow centers to continue to grow and diversify their non-NSF memberships during their Phase II period. After ten years, a Phase III award provides a third five-year award for centers that demonstrate their viability, sustainability, and which have had a significant impact on industry research as measured through annual reports, site visits, and adherence to I/UCRC requirements. Centers are expected to be fully supported by industry, other Federal agencies, and state and local government partners after fifteen-years as an I/UCRC.

Centers will be required to provide data to NSF and its authorized representatives (contractors or grantees). These data will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth. Updates to the IUCRC database of performance indicators will be required annually. Centers will be responsible for submitting the following information after the award expires for their fiscal year of activity. The indicators are both quantitative and descriptive.

- Quantitative information from the most recently completed fiscal year such as:
  - Number and diversity of students, faculty, and industrial numbers involved in the center
  - Degrees granted to students involved in center activities
  - Amounts and sources of income to the center, and
  - Lists of patents, licenses, and publications created
- Operating budget and total funding:
  - Total funding
  - NSF I/UCRC funding received
  - Other NSF funding received
  - Additional support broken down by Industry, State, University, Other Federal, Non-Federal and other support
- Capital and in-kind support:
  - Equipment
  - Facilities
  - Personnel
  - Software
  - Other support
- Human resources:
  - Researchers (number of faculty scientists and engineers, number of non-faculty scientists and engineers)
  - Students (number of graduates, number of undergraduates)
  - Administration, number of full and part time professional and clerical staff
  - Information about broadening participation on the above with plans to increase broadening participation, if necessary
- Center director descriptors:
  - Position and rank of director
  - Status of tenure
  - Name and position of the person to whom the center director reports
  - Estimate of the percent of time the director devotes to center administration, other administration, research, teaching, other
- Center outcomes:
  - Students receiving degrees and type degree earned
  - Students hired by industry by type of degree
  - Publications
  - Number with center research
  - Number with Industrial Advisory Board Members
  - Number of presentations
- Intellectual property events:
  - Invention disclosures
  - Patent applications
  - Software copyrights
  - Patents granted and derived or both
  - Licensing agreements
  - Royalties realized

I/UCRCs will also include evaluation conducted by independent evaluators who cannot be from the department(s) with the institution(s) receiving funding for the I/UCRC award. The center evaluator will be responsible for:

- Preparing an annual report of center activities with respect to industrial collaboration
- Conducting a survey of all center participants to probe the participant satisfaction with center activities
- Compiling a set of quantitative indicators determined by NSF to analyze the management and operation of the center
- Participating in I/UCRC center and informational meetings
- Reporting to NSF on the center's status using a checklist provided by NSF to help determine if the center is adhering to the I/UCRC policy and guidelines
- Bi-annual reporting to NSF
- Reporting to NSF within a month of each Industrial Advisory Board meeting on the top research highlights, technology transfer, patents, and major discoveries that demonstrate successful investments
- Performing exit interviews to determine why members chose to withdraw from the center
- Participating in continuous quality process improvement by providing information to the NSF I/UCRC program

Use of the Information: The data collected will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth.

Estimate of Burden: 150 hours per center (160 sites) for fifty six centers for a total of 8400 hours.

Respondents: Industry, academic institutions; non-profit institutions; government.

Estimated Number of Responses per Report: One from each of the 160 sites.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 21, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–32514 Filed 12–27–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, January 11, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 8274 Airbag Performance in General Aviation Restraint Systems

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, January 7, 2011.

The public may view the meeting via a live or archived webcast by accessing

a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: December 23, 2010.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2010–32779 Filed 12–23–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0393]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 2, 2010, to December 15, 2010. The last biweekly notice was published on December 14, 2010 (75 FR 77906).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; 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.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *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, 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 ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital 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 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 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 EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *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 NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home

addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, *see* the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: July 22, 2010.

Description of amendment request: The amendments would revise an element of the methodology used in evaluating the radiological consequences of design basis steam generator tube rupture (SGTR) accidents. Specifically, the changes will revise the Palo Verde Nuclear Generating Station (PVNGS) Updated Final Safety Analysis Report (UFSAR), Section 15.6.6, "Steam Generator Tube Rupture," to reflect a lower iodine spiking factor assumed for the coincident event Generated Iodine Spike (GIS) and the resulting reduction in the radiological consequences provided in UFSAR Table 15.6.3–5, "Radiological Consequences for the Limiting SGTRLOPSF [Steam Generator Tube Rupture with Loss of Offsite Power and Single Failure] Event."

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 amendment changes an element of the methodology used in evaluating the radiological consequences of design basis SGTR accidents. This change will revise the iodine spiking factor used for a GIS from a value of 500 to a value of 335. The proposed change in the methodology element does not involve any design or physical changes to the facility or any component of that facility. The proposed change creates no new failure modes or initiating occurrences that could result in a design basis transient or accident evaluated in the Palo Verde Nuclear Generating Station (PVNGS) Updated Final Safety Analysis Report (UFSAR). Therefore the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change in the methodology element does change the design basis analyses results for PVNGS. However, the results remain bounded by the previous analyzed values and remain within the acceptance criteria for PVNGS of 100% of the 10 CFR [Part] 100 maximum thyroid dose limit of 300 rem [roentgen equivalent man].

Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously analyzed.

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 amendment changes an element of the methodology used in evaluating the radiological consequences of design basis SGTR accidents. This change will revise the iodine spiking factor used for a GIS from a value of 500 to a value of 335. The proposed change in the methodology element does not involve any design or physical changes to the facility or any component of that facility. The proposed change in the methodology element does change the design basis analyses results for PVNGS; however, these results remain bounded by the previous analyzed values and remain within the acceptance criteria for PVNGS of 100% of the 10 CFR [Part] 100 maximum thyroid dose limit of 300 rem.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment changes an element of the methodology used in evaluating the radiological consequences of design basis SGTR accidents. This change will revise the iodine spiking factor used for a GIS from a value of 500 to a value of 335. The proposed change in the methodology element does not involve any design or physical changes to the facility or any component of that facility. The proposed methodology element change for a postulated SGTR, with a coincident loss of offsite power, GIS, and a failed open atmospheric dump valve (ADV), results in lower maximum dose consequences at the Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) [than] previously analyzed for this event combination. The methodology element change results in the 2-hour maximum thyroid dose value of 182 rem at the EAB being reduced to 124 rem. In addition, the 8-hour maximum thyroid dose of 125 rem at the LPZ, would be reduced to 84 rem.

Previously for PVNGS, the GIS 8-hour maximum thyroid dose was bounding at the LPZ and the pre-Accident Iodine Spike (PIS) 2-hour maximum thyroid dose was bounding at the EAB. The methodology element change reduces the GIS calculated dose at both the EAB and LPZ for SGTR events, but it does not affect the PIS dose values. Since the GIS calculated dose at the LPZ drops below the PIS 8-hour LPZ maximum thyroid dose (91 rem), the PIS 8-hour LPZ dose will become bounding for PVNGS. The PIS 2-hour EAB maximum thyroid dose (294 rem), remains the bounding dose at the EAB.

The revised dose consequences remain bounded by the previous analyzed values and remain within the 10 CFR Part 100 guideline values which are the acceptance criteria for PVNGS Units 1, 2, and 3. In addition, the proposed change has no effect on previously reported dose consequences for control room personnel following any postulated SGTR event.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 6, 2010.

Description of amendment request: The proposed change will revise the note in Surveillance Requirement (SR) 3.5.4.1 in the Refueling Water Storage

Tank (RWST) Technical Specification (TS). Specifically, the proposed change will not require monitoring of the RWST temperature every 24 hours when the RWST heating steam supply isolation valves are locked closed.

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?

No. The proposed change revises the existing Indian Point [Nuclear Generating Unit No.] 3 [(IP3)] Refueling Water Storage Tank (RWST) Technical Specification (TS) Surveillance Requirement (SR) 3.5.4.1 to revise the note that eliminates the requirement to perform SR 3.5.4.1 when ambient air temperatures are within the operating limits of the RWST. The revision to the note adds a requirement that the steam heating supply isolation valves be locked closed when not performing the surveillance. The additional requirement does not increase the probability of an accident occurring since it is not an accident initiator and does not increase the consequences of an accident since it is providing additional assurance that the RWST is within the temperature limits assumed for accident analyses. The change increases observation of the RWST temperature when the steam supply isolation valves are not locked closed and does not otherwise affect [* * *] the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the note that eliminates the requirement to perform SR 3.5.4.1 when ambient air temperatures are within the operating limits of the RWST. The revision adds the additional requirement of locking closed the steam supply isolation valves. The proposed change does not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. Also, the proposed change does not result in a change to the way that the equipment or facility is operated so that no new accident initiators are created.

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?

No. The proposed change revises the note that eliminates the requirement to perform SR 3.5.4.1 when ambient air temperatures are within the operating limits of the RWST. The revision adds the additional requirement of locking closed the steam supply isolation valves. The change does not reduce margin since it increases the temperature surveillance frequency for the RWST to provide further assurance that the required water temperature is maintained at all times.

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, 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., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 8, 2010.

Description of amendment request: The proposed license amendment request will make changes related to the final resolution of an unresolved issue associated with Technical Specification (TS) Amendment No. 181 dated February 25, 2009. This issue was resolved with the approval of Revision 4 of Technical Specification Task Force (TSTF) Change Traveler TSTF–493, "Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Setting] Functions," which included the instrument function (*i.e.,* Condensate Storage Tank (CST) Level-Low) that was the subject of Amendment No. 181. Specifically, the proposed change will add the appropriate notes as specified in TSTF–493 to the surveillance requirements associated with TS Table 3.3.5.1–1, "Emergency Core Cooling System Instrumentation," Function 3.d, Condensate Storage Tank Level—Low, and to TS Table 3.3.5.2–1, "Reactor Core Isolation Cooling System Instrumentation," Function 3, Condensate Storage Tank Level—Low. The supporting TS Bases will also be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds test requirements to the CST Level-Low function to ensure the CST Level-low instruments will function as required. Surveillance tests are not an initiator of any accident previously evaluated. The CST components, for which the additional requirements were added, continue to be operable and capable of performing their intended function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical change to the plant, i.e., no new or different type of equipment will be installed. The proposed change does not alter assumptions made in the safety analysis but ensures that the CST Level-low instruments perform as assumed in the [Updated Final Safety Analysis Report].

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds test requirements that will assure that (1) the CST Level-low instrumentation for the setpoint allowable value will be the limiting setting for assessing instrumentation channel operability and (2) will be conservatively determined so that the evaluation of CST instrument performance history and the requirements of the calibration procedures will not have an adverse effect on equipment operability. The testing methods and acceptance criteria for the CST Level-low instrumentation will continue to be met. There is no impact to the safety analysis acceptance criteria as described in the plant licensing basis because no change is made to the accident analysis assumptions.

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: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 12, 2010.

Description of amendment request: The proposed amendment would modify Item 1 of Table 2–5, "Instrumentation Operating Requirements for Other Safety Feature Functions," of Technical Specification (TS) 2.15, "Instrumentation and Control Systems," to provide new Note (e), and Surveillance Requirement (SR) Items 1 and 2 of Table 3–3, "Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls," of TS 3.1, "Instrumentation and Control," which pertain to operability of the primary and secondary control element assembly (CEA) position indication system (CEAPIS) channels. A new SR is proposed for Item 4 of Table 3–3 of TS 3.1, which will verify the position of CEAs each shift. The proposed amendment will ensure that CEA alignment is maintained during power operations so that the power distribution and reactivity limits defined by the design power peaking and shutdown margin (SDM) limits are preserved.

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 amendment will allow plant operation to continue when a CEAPIS channel is inoperable by requiring prompt verification of CEA positions following CEA movement. CEAs are most likely to become misaligned during movement and therefore, this change will cause CEA alignment errors to be promptly detected and corrected. It is appropriate to clarify that CEAPIS channels are not subject to the requirements of TS 2.15(1), (2), and (3) as they are not designed to be placed in trip or bypass, nor are they engineered safety feature (ESF) or isolation logic subsystems.

The proposed amendment does not alter the requirements of TS 2.15(4) regarding the rod block function of the secondary CEAPIS channel. Should the secondary CEAPIS channel or its rod block function be inoperable, several additional CEA deviation events are possible. However, this situation is already addressed by TS 2.15(4), which requires the CEAs (rods) to be maintained fully withdrawn with the control rod drive system mode switch in the off position except when manual motion of CEA Group 4 is required to control axial power distribution. This is the same position that the CEAs must be in (fully withdrawn) when the plant is at power (Mode 1) in order to utilize distributed control system (DCS) core mimic to CHANNEL CHECK the CEAPIS channels.

If it was not possible to use DCS core mimic to verify the primary CEAPIS channel as would be the case if CEA Group 4 was inserted to control axial power distribution, then the primary CEAPIS channel would be declared inoperable when the CHANNEL CHECK could not be accomplished. The plant would then be placed in hot shutdown (Mode 3) within 12 hours in accordance with TS 2.15(4). Therefore, although the proposed amendment will allow a CEAPIS channel to be inoperable indefinitely, there is no significant increase in the probability or consequences of an accident as the requirements of TS 2.15(4) will continue to be met. This serves to prevent the type of CEA deviation events that the rod block function was designed for.

Replacing the current method of verifying CEAPIS data with the defined term CHANNEL CHECK is an improvement that provides additional flexibility without weakening the intent of the surveillance. As a result, when it is feasible to obtain CEA position indication from DCS core mimic (i.e., when the CEAs are either fully inserted or fully withdrawn), the primary and secondary CEAPIS channels will be compared with DCS core mimic indication as well as each other.

As an additional means of verifying CEA positions, DCS core mimic indication provides added confidence that the CEAs are in the indicated positions. Should the primary or secondary CEAPIS channel become inoperable, the accuracy and reliability of DCS core mimic indication is assured by its previous comparison with both OPERABLE channels. Comparison of the OPERABLE CEAPIS channel with DCS core mimic will satisfy the required CHANNEL CHECK and allow continued operation while the inoperable channel is repaired. The proposed amendment ensures that the CEA alignment required by TS 2.10.2(4) is met each shift by requiring all full length (shutdown and regulating) CEAs to be positioned within 12 inches of all other CEAs in the group.

The change proposed for TS 2.10.2(7)c incorporates more conservative wording to ensure that the regulating CEA groups are maintained within the Long Term Insertion Limit. The proposed change will ensure that corrective actions are taken if either time interval is exceeded and makes TS 2.10.2(7)c more consistent with CE STS.

The proposed amendment does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. As an additional means of verifying primary and secondary CEAPIS data, DCS core mimic indication increases confidence in the reliability of CEAPIS data.

The proposed amendment will help minimize unplanned shutdowns that can cause plant transients yet continues to ensure that power distribution and reactivity limits are maintained.

Therefore, it is concluded that this 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 amendment does not change the design function or operation of the primary or secondary CEAPIS channels. If one CEAPIS channel should become inoperable, the position of CEAs will be verified within 15 minutes of any CEA movement to quickly detect and correct CEA alignment errors. Data from each CEAPIS channel will continue to be compared to the other channel each shift as before. However, a CHANNEL CHECK will require that CEAPIS channel data also be compared with DCS core mimic indication when it is available. Thus, when the CEAPIS channels are required to be OPERABLE, there will be at least two means of verifying the position of CEAs or else appropriate actions must be taken. The CEA alignment required by TS 2.10.2(4) is assured by requiring verification each shift that all full length (shutdown and regulating) CEAs are positioned within 12 inches of all other CEAs in the group.

No changes are proposed to testing and calibration of the CEAPIS channels and these requirements will continue to ensure that they are capable of performing their design function. Use of the defined term CHANNEL CHECK is an appropriate surveillance method as it requires that the channel be compared with other independent channels measuring the same variable where feasible. DCS core mimic is a diverse, accurate and reliable means of verifying CEA positions when the CEAs are fully inserted or fully withdrawn. The change proposed for TS 2.10.2(7)c ensures that appropriate corrective actions are taken when the regulating CEA groups are below the Long Term Insertion Limit in excess of either of the specified time intervals.

No new structures, systems, or components (SSCs) are being installed, and no credible new failure mechanisms, malfunctions, or accident initiators are created.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

When a CEAPIS channel is inoperable, the proposed amendment allows plant operation to continue but requires more frequent verification of CEA positions following any CEA movement, which is when CEAs are most likely to become misaligned. This will enable CEA alignment errors to be detected and corrected more promptly. As CEAPIS channels are not designed to be placed in trip

or bypass, nor are they engineered safety feature (ESF) or isolation logic subsystems, it is appropriate to clarify that TS 2.15(1), (2), and (3) do not apply. FCS normally operates with the CEAs fully withdrawn and maintains reactivity control by adjusting reactor coolant system (RCS) boric acid concentration. When the CEAs are fully withdrawn (or fully inserted), DCS core mimic indication provides accurate and reliable indication of CEA positions suitable for comparison with the primary and secondary CEAPIS channels. Thus, even with one CEAPIS channel inoperable, a diverse means of verifying the accuracy of the OPERABLE CEAPIS channel will be available. The accuracy and reliability of DCS core mimic is assured by testing conducted each refueling outage with continued assurance provided by comparison with primary and secondary CEAPIS each shift.

The change also ensures that the CEA alignment required by TS 2.10.2(4) is met each shift by requiring all full length (shutdown and regulating) CEAs to be positioned within 12 inches of all other CEAs in the group. The proposed amendment does not alter the TS 2.15(4) requirement to place the reactor in hot shutdown in the event that both CEAPIS channels are inoperable. The change proposed for TS 2.10.2(7)c incorporates more conservative wording to ensure that the regulating CEA groups are maintained within the Long Term Insertion Limit.

The proposed amendment will help minimize unplanned shutdowns that can cause plant transients yet continues to ensure that power distribution and reactivity limits are maintained. The proposed amendment does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

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: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 4, 2010.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) requirements for snubbers in TS 3/4.7.9 due to planned revisions to the inservice inspection (ISI) program.

For the current third 10-year ISI intervals, at Salem Nuclear Generating Station (Salem), Units 1 and 2, snubber testing and examination are performed in accordance with the specific requirements of TS 3/4.7.9 in lieu of the requirements contained in American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (Code), Section XI, Article IWF–5000, as previously authorized by the U.S. Nuclear Regulatory Commission (NRC or the Commission).

Section 50.55a(g)(4)(ii) of Title 10 of the Code of Federal Regulations (10 CFR) requires that inservice examination of components conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the ASME Code incorporated by reference in 10 CFR 50.55a(b), 12 months before the start of the inspection interval. For the Salem Unit 1 fourth 10-year ISI interval beginning on May 20, 2011, the licensee intends to adopt Subsection ISTD of the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code), 2004 Edition, in place of the requirements for snubbers in ASME Code, Section XI, Articles IWF–5200(a) and (b) and IWF–5300(a) and (b), as permitted by 10 CFR 50.55a(b)(3)(v). The licensee also intends to adopt Subsection ISTD of the ASME OM Code for the remainder of the Salem Unit 2 third 10-year ISI interval which ends on November 27, 2013.

In accordance with 10 CFR 50.55a(g)(5)(ii), if a revised ISI program for a facility conflicts with the TSs for the facility, licensees are required to apply to the Commission for amendment of the TSs to conform the TSs to the revised program. Due to the planned changes to the ISI program, the proposed amendment would replace the specific TS requirements for snubbers, currently contained in surveillance requirement (SR) 4.7.9, with reference to the program for examination, testing and service life monitoring for snubbers. In addition, the current reference to SR 4.7.9c in TS ACTION 3.7.9 would be replaced with reference to the program for snubbers.

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 Nuclear Regulatory Commission (NRC) staff 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 proposed changes revise [TS 3/4.7.9 due to planned changes to the ISI program for snubbers. Specifically, the proposed amendment would replace the TS SRs for snubbers with reference to the program for examination, testing and service life monitoring for snubbers. Following implementation of the proposed amendment, in lieu of the TS SRs, snubber examination, testing and service life monitoring would be governed by the requirements in Section XI of the ASME Code or the OM Code as required by 10 CFR 50.55a(g) or 10 CFR .55a(b)(3)(v), except where the NRC has granted specific written relief, pursuant to 10 CFR 50.55a(g)(6)(i), or authorized alternatives pursuant to 10 CFR 50.55a(a)(3).]

Snubber examination, testing and service life monitoring is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased.

Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.9 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to SR 4.7.9. Therefore the proposed change does not adversely affect plant operations, design functions or analyses that verify the capability of systems, structures, and components to perform their design functions. The consequences of accidents previously evaluated are not significantly increased.

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 do not involve any physical alteration of plant equipment. The proposed change does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes ensure snubber examination, testing and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g) except where the NRC has granted specific written relief, pursuant to 10 CFR 50.55a(g)(6)(i), or authorized alternatives pursuant to 10 CFR

50.55a(a)(3). Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.9 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to SR 4.7.9.

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: Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 22, 2010, as supplemented by letter dated November 22, 2010.

Description of amendment request: The proposed amendment consists of changes to the approved fire protection program as described in the Wolf Creek Generating Station (WCGS) Updated Safety Analysis Report (USAR). Specifically, amendment proposes a deviation from a commitment to certain technical requirements of 10 CFR, Part 50, Appendix R, Section III.L.1, as described in Appendix 9.5E of the WCGS USAR. The licensee has proposed to revise USAR Table 9.5E–1 to include information on Reactor Coolant System process variables not maintained within those predicted for a loss of normal ac [alternating current] power.

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 design function of structures, systems and components (SSCs) are not impacted by the proposed change. Evaluation SA–08–006 Rev. 1 [RETRAN–3D Post-Fire Safe Shutdown (PFSSD) Consequence Evaluation for a Postulated Control Room Fire] has demonstrated that the formation of voids in the reactor head for a short time following a fire in the control room and spurious temporary opening of the pressurizer power operated relief valve (PORV) does not result in damage to a fission product barrier and does not result in a loss of natural circulation cooldown. The proposed change does not alter or prevent the ability of SSCs from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, the probability of any accident previously evaluated is not increased. Equipment required to mitigate an accident remains capable of performing the assumed function.

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 change will not alter the requirements or function for systems required during accident conditions. The design function of structures, systems and components are not impacted by the proposed change. The thermal hydraulic analysis of the reactor coolant system identified that the process variables are not maintained within those predicted for a loss of normal ac power, however, the fission product boundary integrity is not affected.

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.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on departure from nuclear boiling ratio (DNBR) limits, heat flux hot channel factor ($F_Q(Z)$) limits, nuclear enthalpy rise hot channel factor ($FN_{N\Delta H}$) limits, peak centerline temperature (PCT) limits, peak local power density or any other margin of safety.

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, 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: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 4, 2010.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.6.5, "CORE OPERATING LIMITS REPORT (COLR)," to replace the existing large break loss-of-coolant accident (LOCA) analysis methodology. Specifically, the proposed change adds a reference of Westinghouse Electric Company's topical report WCAP–16009–P–A, "Realistic Large Break LOCA Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method (ASTRUM)," to TS 5.6.5b.

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 change revises TS Section 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to TS 5.6.5b as a method used for establishing core operating limits.

Accident analyses are not accident initiators; therefore, the proposed change does not involve a significant increase in the probability of an accident. The analyses using ASTRUM demonstrated that the acceptance criteria in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for lightwater nuclear power reactors," were met. Large break LOCA analyses performed consistent with the methodology in NRC-approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met; thus, this change does not involve a significant increase in the consequences of an accident. No physical changes to the plant are associated with the proposed change.

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 previously evaluated?

Response: No.

The proposed change revises TS Section 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to TS 5.6.5b as a method used for establishing core operating limits. There are no physical changes being made to the plant as a result

of using the Westinghouse ASTRUM analysis methodology in WCAP–16009–P–A for performance of the large break LOCA analyses. Large break LOCA analyses performed consistent with the methodology in NRC-approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met. No new modes of plant operation are being introduced. The configuration, operation, and accident response of the structures or components are unchanged by use of the new analysis methodology. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario. The parameters assumed in the analyses are within the design limits of existing plant equipment.

In addition, employing the Westinghouse ASTRUM large break LOCA analysis methodology does not create any new failure modes that could lead to a different kind of accident. The design of systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to instrumentation actuation setpoints. Adding the reference to WCAP–16009–P–A in TS Section 5.6.5b is an administrative change that does not create the possibility of a new or different kind of accident.

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 change revises TS Section 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–1 6009–P–A to TS 5.6.5b as a method used for establishing core operating limits. The analyses using ASTRUM demonstrated that the applicable acceptance criteria in 10 CFR 50.46 are met. Margins of safety for large break LOCAs include quantitative limits for fuel performance established in 10 CFR 50.46. These acceptance criteria are not being changed by this proposed new methodology. Large break LOCA analyses performed consistent with the methodology in NRC-approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met; thus, this change does not involve a significant reduction in a margin of safety.

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, 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: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, *see* the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

NextEra Energy Point Beach, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Manitowoc County, Wisconsin

Date of amendment request: April 7, 2009, as supplemented by letters dated June 17 (two letters) and December 8 of 2009; and April 15, July 8, July 28, August 24, September 9, September 21, October 14, and November 1 of 2010.

Brief description of amendment request: The proposed amendment would increase the licensed core power level for PBNP Units 1 and 2 from 1540 to 1800 megawatts thermal. The increase in core thermal power will be approximately 17 percent over the current licensed thermal power level and is categorized as an Extended Power Uprate.

Date of publication of individual notice in ***Federal Register***: November 17, 2010 (75 FR 70305).

Expiration date of individual notice: January 18, 2011.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *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 Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendment: September 8, 2010.

Brief description of amendment: The amendments delete the Technical Specification requirements related to the containment hydrogen recombiners and the hydrogen monitors, in accordance with Nuclear Energy Institute Technical Specification Task Force (TSTF) initiative designated as TSTF–447.

Date of issuance: December 14, 2010.

Effective date: As of the date of issuance and shall be implemented

within 120 days from the date of issuance.

Amendment Nos.: 313 (for Unit 1) and 296 (for Unit 2).

Facility Operating License Nos. DPR–58 and DPR–74: Amendment revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: October 14, 2010 (75 FR 63209).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 2010.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 24, 2009, as supplemented by letter dated May 26, 2010.

Brief description of amendments: These amendments revise Technical Specification (TS) 4.2.1, "Fuel Assemblies," to add Optimized ZIRLO™ as an acceptable fuel rod cladding material and add two Westinghouse topical reports to the analytical methods identified in TS 5.6.5.b.

Date of issuance: November 29, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 199, 187.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 4, 2010 (75 FR 23816).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland this 16th day of December, 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–32668 Filed 12–27–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0031]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 4.16, Revision 2, "Monitoring and Reporting Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Cycle Facilities."

FOR FURTHER INFORMATION CONTACT: Mekonen M. Bayssie, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7489 or e-mail *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of requests for licensing actions. In March 2010, Revision 2 of Regulatory Guide 4.16, "Monitoring and Reporting Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Cycle Facilities," was published as Draft Regulatory Guide, DG–4017, with a public comment period of 60 days. This guide describes a method that the staff of the NRC considers acceptable for the development and implementation of effluent monitoring programs described in license applications and for monitoring and reporting effluent data by licensees. The guidance is applicable to nuclear fuel cycle facilities, with the exception of uranium milling facilities and nuclear power reactors. The NRC has developed other regulatory guides applicable to those facilities.

Revision of this regulatory guide is necessary to update references and practices and to communicate its applicability to the enrichment plants which have come under the regulatory authority of the NRC since the issuance of Revision 1 of the guide.

II. Further Information

The staff's responses to the public comments received on DG–4017 are located in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number ML101720322. The regulatory analysis may be found in ADAMS under Accession No. ML101720311. Electronic copies of Regulatory Guide 4.16, Revision 2 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland this 15th day of December, 2010.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–32448 Filed 12–27–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Approval of Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan: Ricketts Acquisition LLC and the Chicago National League Ball Club, LLC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from Ricketts Acquisition LLC for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Pension Plan. A notice of the request for exemption from the requirement was published on September 3, 2010. The effect of this

notice is to advise the public of the decision on the exemption request.

ADDRESSES: Copies of public comments are available on PBGC's Web site, *http://www.pbgc.gov.* Copies of the comments may be obtained by writing PBGC's Communications and Public Affairs Department (CPAD) at Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: Theresa Anderson, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that:

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) of the Freedom of Information Act.

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it:

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on the request for exemption.

The Decision

On September 3, 2010, the PBGC published a notice of the pendency of a request by Ricketts Acquisition LLC (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Chicago Cubs from the Chicago National League Ball Club, LLC (the "Seller"). According to the request, the Major League Baseball Players Pension Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the "Clubs") and the Major League Baseball Players Association (the "Players Association").

According to the Buyer's representations, the Seller was obligated to contribute to the Plan for certain employees of the sold operations. Effective October 13, 2009, the Buyer and Seller entered into an agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business of employing employees under the Plan. The Buyer agreed to contribute to the Plan for substantially the same number of contribution base units as the Seller. The Seller agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability. The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is $4,068,868. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations subject to the sale is $34,030,359. While the separate major league clubs are the nominal contributing employers to the Plan, the Major League Central Fund under the Office of the Commissioner receives the revenues and makes the payments for certain common expenses, including each club's contribution to the Plan. In support of the waiver request, the requester asserts that: "The Plan is funded from the Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the Clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the Clubs. A change in ownership of a particular Club does not affect the obligation of the Central Fund to fund the Plan out of the Revenues. As such, approval of this exemption

request would not significantly increase the risk of financial loss to the Plan."

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, December 12, 2010.

Joshua Gotbaum,

Director.

[FR Doc. 2010–32528 Filed 12–27–10; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan: Rangers Baseball Express, LLC, and Texas Rangers Baseball Partners

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has received a request from Rangers Baseball Express, LLC, for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Pension Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if the transaction meets certain conditions. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption, the statute and PBGC regulations require PBGC to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before February 11, 2011.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Theresa Anderson, Attorney, Office of the Chief Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4020. (For TTY/TTD users, call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or the "Act"), provides that a bona fide arm's length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C) are that:

(A) The purchaser has an obligation to contribute to the plan with respect to covered operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for the relief afforded under section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the PBGC to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the statute be administered in a manner that assures protection of the plan with the least intrusion into normal business transactions practicable. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, *The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations* 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of a variance or exemption from the bond/escrow requirement does not constitute a finding by PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or exemption from the bond/escrow requirement under any of the tests established in the regulation (§§ 4204.12 and 4204.13) is to be made to the plan in question. PBGC will consider variance or exemption requests only when the request is not based on satisfaction of one of the four regulatory tests under regulation §§ 4204.12 and 4204.13, or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or

confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (Freedom of Information Act). *See* 29 CFR 4204.21.

Under § 4204.22 of the regulation, PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it:

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 4204.22(b) of the regulation requires PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

PBGC has received a request, dated September 9, 2010, from Rangers Baseball Express, LLC (the "Purchaser") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of Texas Rangers Baseball Partners (the "Seller"). In the request, the Purchaser represents, among other things, that:

1. The Seller was obligated to contribute to the Major League Baseball Players Pension Plan (the "Plan") for certain employees of the purchased operations.

2. The Purchaser has agreed to assume the obligation to contribute to the Plan for substantially the same number of contribution base units as the Seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the purchased operations (if not for section 4204) should the Purchaser withdraw from the Plan and fail to pay its withdrawal liability.

4. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is $34,030,359.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is $4,068,868, which is to be posted if PBGC has not acted on the request by the end of the plan year of the request.

6. The Major League Baseball Clubs (the "Clubs") have established the Major League Central Fund (the "Central Fund") pursuant to the Major League Baseball Constitution. Under this Constitution, the Office of the Commissioner of Baseball pays contributions to the Plan from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games; (ii) radio and television revenue from World Series, League Championship Series, Division Series, All-Star Games, and (iii) certain other radio and television revenue, including revenues from foreign broadcasts, regular, spring training, and exhibition games ("Revenues").

7. In support of the exemption request, the Purchaser asserts that "[t]he Plan is funded from the Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the Clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the Clubs. A change in ownership of a particular Club does not affect the obligation of the Central Fund to fund the Plan out of the Revenues. As such, approval of this exemption request would not significantly increase the risk of financial loss to the Plan."

8. A complete copy of the request was sent to the Plan and to the Major League Baseball Players Association by certified mail, return receipt requested.

Issued at Washington, DC on December 17, 2010.

Joshua Gotbaum,

Director.

[FR Doc. 2010–32532 Filed 12–27–10; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations plans to meet on the following dates—

Wednesday, January 19, 2011.

Wednesday, February 16, 2011.

The meetings will start at 10 a.m. and will be held in the AIA Gallery Room at the American Institute of Architects, 1735 New York Avenue, NW., Washington, DC 20006. Interested parties should consult the Council Web site at *http://www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting dates.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, "Creating Labor-Management Forums to Improve Delivery of Government Services," which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

FOR FURTHER INFORMATION CONTACT: Tim Curry, Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street, NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930; FAX (202) 606–2613; or e-mail at *PLR@opm.gov*.

For the National Council.

John Berry,

Director.

[FR Doc. 2010–32625 Filed 12–27–10; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautics Science and Technology Subcommittee; Committee on Technology; National Science and Technology Council

ACTION: Notice of Meeting—Public input is requested on the National Aeronautics Research, Development, Test and Evaluation (RDT&E) Infrastructure Plan.

SUMMARY: The Aeronautics Science and Technology Subcommittee (ASTS) of the National Science and Technology Council's (NSTC) Committee on Technology will hold a public meeting

to review and discuss the National Aeronautics RDT&E Infrastructure Plan. Executive Order (E.O.) 13419—National Aeronautics Research and Development—signed December 20, 2006, calls for the development of this plan. The plan is guided by both the National Aeronautics Research and Development (R&D) Policy and the National Aeronautics Research and Development Plan that were developed by the NSTC in consonance with E.O. 13419.

Dates and Addresses: The meeting will be held in conjunction with the 49th AIAA Aerospace Sciences Meeting at the Orlando World Center Marriott, 8701 World Center Drive, Orlando, Florida 32821 on Friday, January 7, 2011, from 1 p.m. to 2:30 p.m. in Crystal Ballroom A. Information regarding the 49th AIAA Aerospace Sciences Meeting is available at the: *http://www.aiaa.org* Web site. Note: Persons solely attending this ASTS public meeting do not need to register for the AIAA Conference and Exhibit to attend this public meeting. There will be no admission charge for persons solely attending the public meeting. Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: Additional information and links to E.O. 13419, the National Aeronautics R&D Policy, the National Aeronautics R&D Plan are available by visiting the Office of Science and Technology Policy's NSTC Web site at: *http://www.whitehouse.gov/administration/eop/ostp/nstc/aero* or by calling 202–456–6012.

SUPPLEMENTARY INFORMATION: E.O. 13419 and the National Aeronautics R&D Policy call for executive departments and agencies conducting aeronautics R&D to engage industry, academia and other non-Federal stakeholders in support of government planning and performance of aeronautics R&D. At this meeting, ASTS members will review the content of the National Aeronautics RDT&E Infrastructure Plan and receive input to help inform the future development of national aeronautics R&D planning documents.

Ted Wackler,

Deputy Chief of Staff, OSTP.

[FR Doc. 2010–32633 Filed 12–27–10; 8:45 am]

BILLING CODE 3170–W1–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 27d–1 and Form N–27D–1; SEC File No. 270–499; OMB Control No. 3235–0560.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information under the Investment Company Act of 1940 ("Act")[1] summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 27d–1 (17 CFR 270.27d–1) is entitled "Reserve Requirements for Principal Underwriters and Depositors to Carry Out the Obligations to Refund Charges Required by Section 27(d) and Section 27(f) of the Act." Form N–27D–1 (17 CFR 274.127d–1) is entitled "Accounting of Segregated Trust Account." Rule 27d–1 requires the depositor or principal underwriter for an issuer of a periodic payment plan to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f) of the Act. The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. A single account may be used for the periodic payment plans of multiple investment companies. Rule 27d–1(j) directs depositors and principal underwriters to make an accounting of their segregated trust accounts on Form N–27D–1, which is intended to facilitate the Commission's oversight of compliance with the reserve requirements set forth in rule 27d–1. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1. Depositors and principal underwriters must file the form once a year on or before January 31 of the year following the year for which information is presented.[2]

Rule 27d–1, which was explicitly authorized by statute, provides assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirements in rule 27d–1 enable the Commission to monitor compliance with reserve rules.

Effective October 27, 2006, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans. Accordingly, the staff estimates that there is no longer any information collection burden associated with rule 27d–1 or Form N–27D–1. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or necessarily even a representative study of the cost of the Commission's rules and forms.

Complying with the collection of information requirements of rule 27d–1 is mandatory for depositors or principal underwriters of issuers of periodic payment plans unless they comply with the requirements in rule 27d–2 (17 CFR 270.27d–2). The information provided pursuant to rule 27d–1 is public and, therefore, will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on

[1] 15 U.S.C. 80a–1 *et seq.*

[2] Instead of relying on rule 27d–1 and filing Form N–27D–1, depositors or principal underwriters for the issuers of periodic payment plans may rely on the exemption afforded by rule 27d–2. In order to comply with rule 27d–2: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements; (ii) the insurance company must satisfy certain financial criteria; and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi-Pavlik Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

December 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32517 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Regulation S–AM; SEC File No. 270–548; OMB Control No. 3235–0609.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Regulation S–AM (17 CFR part 248, subpart B), under the Fair and Accurate Credit Transactions Act of 2003 (Pub. L. 108–159, Section 214, 117 Stat. 1952 (2003)) ("FACT Act"), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

Regulation S–AM implements the requirements of Section 214 of the FACT Act as applied to brokers, dealers, and investment companies, as well as investment advisers and transfer agents that are registered with the Commission (collectively, "Covered Persons"). As directed by Section 214 of the FACT Act, before a receiving affiliate may make marketing solicitations based on the communication of certain consumer financial information from a Covered Person, the Covered Person must provide a notice to each affected individual informing the individual of his or her right to prohibit such marketing. The regulation potentially applies to all of the approximately 21,496 Covered Persons registered with the Commission, although only approximately 12,038 of them have one or more corporate affiliates, and the regulation would require only approximately 2,150 of them to provide consumers with notice and an opt-out opportunity.

The Commission staff estimates that there are approximately 12,038 Covered Persons having one or more affiliates, and that they would require an average one-time burden of 1 hour to review affiliate marketing practices, for a total of 12,038 hours, at a total staff cost of approximately $2,527,929. The staff also estimates that approximately 2,150 Covered Persons would be required to provide notice and opt-out opportunities to consumers, and would incur an average first-year burden of 18 hours in doing so, for a total estimated first-year burden of 38,700 hours, at a total staff cost of approximately $10,294,200. With regard to continuing notice burdens, the staff estimates that each of the approximately 2,150 Covered Persons required to provide notice and opt-out opportunities to consumers would incur a burden of approximately 4 hours per year to create and deliver notices to new consumers and record any opt outs that are received on an ongoing basis, for a total of 8,600 hours, at a total staff cost of approximately $490,200 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 21, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32522 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17a–10; SEC File No. 270–507; OMB Control No. 3235–0563.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (the "Act"), generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Section 2(a)(3) of the Act defines "affiliated person" of a fund to include its investment advisers.[2] Rule 17a–10 (17 CFR 270.17a–10) permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund

[1] 15 U.S.C. 80a–17(a).

[2] 15 U.S.C. 80a–2(a)(3)(E).

for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.[3] Section 17(a) of the Investment Company Act of 1940 (the "Act"), generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Section 2(a)(3) of the Act defines "affiliated person" of a fund to include its investment advisers. Rule 17a–10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio. This requirement regarding the prohibitions and limitations in advisory contracts of subadvisors relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 ("PRA").[4]

The staff assumes that all funds existing in 2003 amended their advisory contracts following the amendments to rule 17a–10 that year that conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[5] Staff also assumes that funds that came into existence after 2003 included the contractual requirements in rule 17a–10 in their subadvisory agreements and therefore there is no continuing burden for those funds.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into new subadvisory agreements each year.[6] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10. Because these additional clauses are identical to[7] the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 12d3–1, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a–10 for this contract change would be 0.75 hours.[8] Assuming that all 252 funds that enter into new subadvisory contracts each year include in their contract the provisions required by the rule, we estimate that the rule's contract requirement will result in 189 burden hours annually, with an associated cost of approximately $59,724.[9]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–10. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

December 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32521 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 270.17a–10(a)(2).

[4] 44 U.S.C. 3501.

[5] We assume that funds formed after 2003 that intended to rely on rule 17a–10 would have included the required provision as a standard element in their initial subadvisory contracts.

[6] Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

[7] 17 CFR 270.17a–10(a)(2).

[8] This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

[9] These estimates are based on the following calculations: 0.75 hours × 252 portfolios = 189 burden hours; $316 per hour × 189 hours = $59,724 total cost. The Commission staff's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The $316 per hour figure for an attorney is from the Securities Industry and Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17a–6, SEC File No. 270–506, OMB Control No. 3235–0564.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (the "Act") generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying

securities or other property to or from, the fund or any company that the fund controls.[1] Rule 17a–6 (17 CFR 270.17a–6) permits a fund and a "portfolio affiliate" (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company's outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (e.g., directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a–6 specifies certain interests that are not "financial interests," including any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 ("PRA").[2]

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is "material," the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a–6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director's finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

Based on staff discussions with fund representatives, we estimate that funds currently do not rely on the exemption from the term "financial interest" with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no principal transactions under rule 17a–6 that will result in a collection of information.

The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of rule 17a–6's collection of information analysis should funds rely on this exemption to the term "financial interest" as defined in rule 17a–6.

The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–6. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: December 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32518 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 27d–2; SEC File No. 270–500; OMB Control No. 3235–0566.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Act") summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27d–2 (17 CFR 270.27d–2) is entitled "Insurance Company Undertaking in Lieu of Segregated Trust Account." Rule 27d–1 (17 CFR 270.27d–1) under the Act requires the depositor or principal underwriter for an issuer of periodic payment plans to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f) of the Act.[1] Rule 27d–2 provides an exemption from rule 27d–1 under the Act for depositors or principal underwriters for the issuers of periodic payments plans. In order to comply with the rule: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements; (ii) the insurance company must satisfy certain financial criteria; and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

Rule 27d–2, which was explicitly authorized by statute, provides assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirement in rule 27d–2 enables the Commission to monitor compliance with insurance company undertaking requirements.

[1] 15 U.S.C. 80a–17(a).

[2] 44 U.S.C. 3501.

[1] The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. Rule 27d–1(j) directs depositors and principal underwriters annually to make an accounting of their segregated trust accounts on Form N–27D–1, which is filed with the Commission. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1.

Effective October 27, 2006, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans. Accordingly, the staff estimates that there is no longer any information collection burden associated with rule 27d–2. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Complying with the collection of information requirements of rule 27d–2 is mandatory for depositors or principal underwriters of issuers of periodic payment plans who rely on the rule for an exemption from complying with rule 27d–1 and filing Form N–27D–1. The information provided pursuant to rule 27d–2 is public and, therefore, will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

December 20, 2010

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32520 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 425; OMB Control No. 3235–0521; SEC File No. 270–462]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 425, OMB Control No. 3235–0521, SEC File No. 270–462.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. The information provided under Rule 425 is made available to the public upon request. Also, the information provided under Rule 425 is mandatory. Approximately 1,680 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 420 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32553 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 12d3–1, SEC File No. 270–504, OMB Control No. 3235–0561.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies ("funds"), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses"). Rule 12d3–1 ("Exemption of acquisitions of securities issued by persons engaged in securities related businesses" (17 CFR 270.12d3–1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3–1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases. The exemption in rule 12d3–1(c)(3) is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that

provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into subadvisory agreements each year.[1] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 17a–10, and 17e–1 and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3–1 for this contract change would be 0.75 hours.[2] Assuming that all 252 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 189 burden hours annually.[3]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi-Pavlik Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: December 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32519 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[1] Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

[2] This estimate is based on the following calculation (3 hours ÷ 4 rules = .75 hours).

[3] This estimate is based on the following calculation: (0.75 hours × 252 portfolios = 189 burden hours.

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933, Release No. 33–9168/December 22, 2010; Securities Exchange Act of 1934; Release No. 34–63596/December 22, 2010]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2011

The Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"), established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Securities and Exchange Commission (the "Commission").

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital and accrued items. The Commission must approve the PCAOB's annual budget and accounting support fee.

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") [1] amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers, beginning in 2011. The 2011 budget approved and submitted by the Board includes an allocation of the annual accounting support fee among issuers and brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. The Commission's Rules of Practice related to its Informal and Other Procedures include a rule that facilitates the Commission's review and approval of PCAOB budgets and the annual accounting support fee.[2] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2010 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2011 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2011 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief Accountant and Executive Director dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2010 actual spending; and attended several meetings with management and staff of the PCAOB to further develop an understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 17 CFR 202.190. See Release No. 33–8724 (July 18, 2006) [71 FR 41998 (July 24, 2006)].

to the PCAOB. The PCAOB approved its 2011 budget during an open meeting on November 23, 2010 and submitted that budget for Commission approval on November 29, 2010.

After considering the above, the Commission did not identify any proposed disbursements in the 2011 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2011 annual accounting support fees do not exceed the PCAOB's aggregate recoverable budget expenses for 2011. The Commission looks forward to the PCAOB's annual updating of its strategic plan and the opportunity for the Commission to review and provide views to the PCAOB on a draft of the updated plan.

In its role as the oversight body of the PCAOB, the Commission is aware of the various uncertainties the PCAOB faces with respect to budgeting its resources and the potential impact if actual experience deviates from budget assumptions. Further, the Commission believes that the 2011 budget approved and submitted by the Board provides sufficient resources and flexibility for the PCAOB to continue to fulfill its mandate and to respond to changes in the assumptions upon which the budget is based. Should the PCAOB find the need to reallocate resources, the PCAOB should work closely with Commission staff on whether any reprogramming efforts result in the need for a supplemental budget request under the Commission's budget rule. In considering any reallocation that may be necessary in 2011, the Commission encourages the Board to identify expenditures in its 2011 budget where flexibility exists.

As part of its review of the PCAOB's 2011 budget, the Commission notes that there are certain budget-related matters that should be addressed or more closely monitored during 2011 related to: (1) The PCAOB's inspections program; (2) its information technology programs; and (3) the impact of implementing legislative and other actions on the PCAOB. Accordingly, the Commission directs the PCAOB during the 2011 budget cycle to:

(1) Continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information will include (a) statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2011, including by location and by year the inspections that are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules, (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections, and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

(2) Continue to include detailed information about the state of the PCAOB's information technology in its quarterly reports to the Commission, including planned, estimated, and actual costs for information technology projects. Such information should also include project plans, life cycle costs and progress, and provide an indication of the level and nature of involvement of consultants.

(3) Consult with the Commission about the PCAOB's plans for implementing changes in response to legislative actions, advisory committees, or consultant reports.

The Commission has determined that the PCAOB's 2011 budget and annual accounting support fee are consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2011 are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–32650 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, December 29, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, December 29, 2010 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; consideration of amicus participation; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 22, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32727 Filed 12–23–10; 11:15 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63584; File No. SR–NYSEArca–2010–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Various NYSE Arca Equities Rules To Harmonize Them With Financial Industry Regulatory Authority Rules

December 21, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 13, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various NYSE Arca Equities rules in order to (1) harmonize them with Financial Industry Regulatory Authority ("FINRA") rules and (2) make certain administrative changes that include, but are not limited to, correcting spelling

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

errors and eliminating confusing or duplicative language and unnecessary references to terms or systems that are now obsolete. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is (1) to make minor substantive amendments to NYSE Arca Equities Rule 2.16 in order to harmonize it with Article V, Section 3 and Article IV, Section 1(c) of FINRA's By-Laws and (2) to make certain administrative changes to various NYSE Arca Equities rules in order to remove confusing or duplicative language and unnecessary references to terms or systems that are now obsolete. By making such administrative changes, the Exchange is not changing or altering any obligations, rights, policies, or practices enumerated within its rules.

NYSE Arca Equities Rule 2.16(b) requires an ETP Holder to electronically file amendments to any document in connection with an application for an ETP within ten business days of the occurrence requiring the amendment. Article IV, Section 1(c) of FINRA's By-Laws permits thirty days for such filing. Similarly, NYSE Arca Equities Rule 2.16(c) requires an ETP Holder to electronically file within ten business days the Uniform Termination Notice for Securities Industry Registration (Form U–5) with FINRA's Web CRD when a person associated with the ETP Holder terminates his or her affiliation with the ETP Holder. Article V, Section 3 of FINRA's By-Laws permits thirty days for such filing. Accordingly, the Exchange proposes to extend the ten business day requirement in the above rules to thirty days in order to harmonize with FINRA's By-Laws.

Administrative Changes

In July, 2007, the NASD and certain departments within NYSE Regulation were consolidated into FINRA. However, some NYSE Arca Equities rules still incorrectly reference the NASD. Where appropriate, the Exchange proposes to replace references to NASD with FINRA. The following NYSE Arca Equities rules will reflect this change: Rule 1.1, Rule 2.3, Rule 6.18, Rule 9.13, and Rule 12. These changes are administrative in nature and do not impose any new regulatory requirements on ETP Holders or other market participants on NYSE Arca Equities.

The SEC's Regulation NMS, which became effective in August, 2005, was designed to modernize and strengthen the national market system for equities and replace the outdated Intermarket Trading System ("ITS"). However, several NYSE Arca Equities rules still reference ITS. Accordingly, the Exchange proposes to eliminate all outdated references to ITS. The following NYSE Arca Equities rules will reflect this change: Rule 1.1, Rule 3.5, Rule 6.8, Rule 6.10, Rule 6.12, Rule 7.31, Rule 7.37, Rule 9.14, and Rule 10.12. Additionally, before Regulation NMS and before Nasdaq became a national securities exchange, the NBBO price protection provision set forth in NYSE Arca Equities Rule 7.37 did not apply to orders in Nasdaq securities. The Exchange proposes to eliminate all language in NYSE Arca Equities Rule 7.31 that states the NBBO price protection provision set forth in Rule 7.37 will not apply to orders in Nasdaq securities. Finally, because no securities are trade-through exempt under Regulation NMS, the Exchange proposes to eliminate all references to trade-through exempt securities in NYSE Arca Equities Rule 7.31.

NYSE Arca Equities Rule 1.1(z) provides that "[t]he term 'Nasdaq Market Maker' shall mean (1) a Nasdaq market maker as defined in NASD Rule 4200(a)(22), as amended from time to time, or (2) an electronic communications network ("ECN")." On August 1, 2006, NASDAQ ceased operations as an ECN and began operations as a national securities exchange, rendering the "Nasdaq Market Maker" concept obsolete. As a result, NASD Rule 4200(a)(22) was replaced by FINRA Rule 6320A(a)(4), which does not contain any reference to "Nasdaq Market Makers." Therefore, the Exchange proposes to eliminate existing NYSE Arca Equities Rule 1.1(z) in order to remove outdated and unnecessary references to terms and systems that are now obsolete. Similarly, because Rule 7.18(a) is concerned only with access to the NYSE Arca Marketplace by "Nasdaq Market Makers," the Exchange proposes to eliminate Rule 7.18(a) and change the title of NYSE Arca Equities Rule 7.18 from "Trading in Nasdaq Securities" to "UTP Regulatory Halts." Such change in title is appropriate because the only remaining rule text under Rule 7.18, which is currently contained in Rule 7.18(b), will provide that the Exchange will halt trading in a Nasdaq security when the UTP Listing Market for such security determines that a UTP Regulatory Halt is appropriate. Finally, because the title of Nasdaq's Unlisted Trading Privileges Plan no longer includes the term "OTC," the Exchange proposes to remove "OTC" from the following NYSE Arca Equities Rule 1.1(hh)–(kk) and Rule 7.18.

Stop Orders and Stop Limit Orders are no longer a valid order types on the NYSE Arca Marketplace. Accordingly, the Exchange proposes to eliminate all outdated references to Stop Orders and Stop Limit Orders. The following NYSE Arca Equities rules will reflect this change: Rule 1.1, Rule 7.31, Rule 7.34, Rule 7.35, Rule 7.37, Rule 7.39, and Rule 7.63.

Because Discretion Limit Orders may be entered in any security, the Exchange proposes to eliminate the language "A Discretionary Order may be designated as a Discretion Limit Order for Nasdaq securities only" from NYSE Arca Equities Rule 7.31(h)(2)(B).

The Exchange proposes to amend NYSE Arca Equities Rule 7.7 to correct a spelling error.

NYSE Arca Equities Rules 2.24 and 9.17 both require ETP Holders to maintain books and records pursuant to SEC Rules 17a–3 and 17a–4. Because Rule 9.17 also requires that ETP Holders maintain books and records as prescribed by the rules and regulations of other Self Regulatory Organizations and other governmental bodies, and because the Exchange only requires one such rule, the Exchange proposes to replace the text of Rule 2.24 with the text of Rule 9.17 and eliminate Rule 9.17.

NYSE Arca Equities Rule 7.17(b) requires that all bids and offers made shall be in accordance with the provisions of Rule 11Ac1–1 of the Securities Exchange Act of 1934. When Regulation NMS became effective in August, 2005, Rule 11Ac1–1 was re-designated as Rule 602 of Regulation NMS. Accordingly, the Exchange proposes to replace the reference to Rule

11Ac1–1 within Rule 7.17(b) with Rule 602.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the "Act"), in general, and further the objectives of Section 6(b)(5),[5] in particular. By amending various NYSE Arca Equities rules in order to harmonize them with FINRA rules and federal rules and to eliminate confusing or duplicative language and unnecessary references to terms or systems that are now obsolete, the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly harmonize its rules with FINRA rules and and to correct non-substantive changes, thereby avoiding further potential confusion and ensuring that the rule text of the Exchange is accurate.[10] Therefore, the Commission designates the proposed rule change to be 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–88 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2010–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–88 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32607 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63591; File No. SR–BX–2010–091]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Continue the Practice Governing the Directed Order Process on BOX

December 21, 2010.

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 December 16, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 Chapter VI, Section 5 (Obligations of Market Makers) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to extend the date of effectiveness of the Directed Order [3] process ("Pilot Program") from December 31, 2010, to June 30, 2011 while the Commission considers the Exchange's proposal to amend the BOX Rules to permit Executing Participants ("EPs") to only receive Directed Orders through the BOX Trading Host from Order Flow Providers ("OFPs") whom the EP has designated.[4] The text of the proposed rule change is available on the Exchange's website at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*, on the Commission's Web site at *http://www.sec.gov,* at 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 13, 2010, the Exchange filed SR–BX–2010–080, a proposal to amend the BOX Rules to continue the practice governing the Exchange's Directed Order process on BOX.[5] Specifically, pursuant to SR–BX–2010–080, the BOX Rules state that the BOX Trading Host identifies to an Executing Participant the identity of the firm entering the Directed Order on BOX. The amended rule as set forth in SR–BX–2010–080 was to be effective on a pilot basis until December 31, 2010, while the Commission considered the Exchange's proposal to amend the BOX Rules to permit EPs to only receive Directed Orders through the BOX Trading Host from OFPs whom the EP has designated.[6]

The purpose of this proposed rule change is to amend Chapter VI, Section 5(c)(i) of the BOX Rules to extend the date of effectiveness of the amended Directed Order rule from December 31, 2010, to June 30, 2011. This extension of the pilot period will afford the Commission the necessary time to consider the Exchange's proposal SR–BX–2010–079 referenced above.[7] In the event the Commission reaches a decision with respect to Exchange proposal SR–BX–2010–079 before June 30, 2011, the proposed Pilot Program governing the Directed Order process on BOX will cease to be effective at the time of that decision.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed extension of the pilot period will afford the Commission the necessary time to consider the Exchange's proposal SR–BX–2010–079 which would amend the BOX Rules to permit EPs to only receive Directed Orders through the BOX Trading Host from OFPs whom the EP has designated.[10] Additionally, the Exchange believes that the proposed extension will allow the Directed Order Pilot Program to remain in effect on BOX without interruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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: (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) [11] of the Act and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [14] 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, as specified in Rule 19b–4(f)(6)(iii),[15] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue the pilot for Directed Orders that has operated under SR–BX–2010–080. A waiver would therefore continue to permit the Directed Order Pilot Program to remain in effect on BOX without interruption.[16] Accordingly, the

[3] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[4] *See* Securities Exchange Act Release No. 63539 (December 14, 2010) (SR–BX–2010–079).

[5] *See* Securities Exchange Act Release No. 63540 (December 14, 2010) (SR–BX–2010–080).

[6] *See* Securities Exchange Act Release Nos. 63540 (December 14, 2010) (SR–BX–2010–080) and 63539 (December 14, 2010) (SR–BX–2010–079).

[7] *See* Securities Exchange Act Release No. 63539 (December 14, 2010) (SR–BX–2010–079).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 63539 (December 14, 2010) (SR–BX–2010–079).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *Id.*

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–091 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2010–091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2010–091 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32615 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63594; File No. SR–Phlx–2010–183]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC To Expand Its Short Term Option Program

December 21, 2010.

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 December 15, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to expand the Short Term Option Program ("STO Program" or "Program")[3] so that the Exchange may select fifteen option classes on which Short Term Option Series[4] may be opened.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 1012 to expand the STO Program so that the Exchange may select fifteen option classes on which Short Term Option Series may be opened.

The STO Program is codified in Commentary .11 to Rule 1012 and Rule 1101A(b)(vi). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than five option classes that expire on the Friday of the following business week that is a business day. In addition to the five-option class limitation, there

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commentary .11 to Rule 1012 and Rule 1101A(b)(vi). *See* Securities Exchange Act Release No. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR–Phlx–2010–84) (notice of filing and immediate effectiveness permanently establishing STO Program on the Exchange). Other exchanges have also established permanent short term option programs. *See* Securities Exchange Act Release Nos. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018) (approval order permanently establishing short term option program); 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72) (approval order [sic] permanently establishing short term option program); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–NASDAQ–2010–073) (notice of filing and immediate effectiveness permanently establishing short term option program); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) [sic] (SR–Arca–2010–059) (notice of filing and immediate effectiveness permanently establishing short term option program); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) [sic] (SR–Amex–2010–062) (notice of filing and immediate effectiveness permanently establishing short term option program); and 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047) (approval order [sic] permanently establishing short term option program).

[4] Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. Rules 1000(b)(44), 1000A(b)(16), Commentary .11 to Rule 1012 and Rule 1101A(b)(vi).

is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.[5] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from five to fifteen the number of option classes that may be opened pursuant to the Program.

The principal reason for the proposed expansion is customer demand for adding, or not removing, short term option classes from the Program. In order that the Exchange not exceed the five-option class restriction, each month since the inception of the Program the Exchange has had to discontinue trading, on the average, more than one short term option class before it could begin trading other option classes within the Program. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes.

As an example, a retail investor recently asked the Exchange to reinstate a short term option class that the Exchange had to remove from trading because of the five-class option limit within the Program. The investor told the Exchange that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. The Exchange feels that it is essential that such negative, potentially very costly impacts on retail investors are eliminated by modestly expanding the Program to enable additional classes to be traded.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes on numerous occasions because of the limitation imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes for investment, trading, and risk management purposes.

Finally, the Commission has requested, and the Exchange has agreed for the purposes of this filing, to submit one report to the Commission providing an analysis of the STO Program (the "Report"). The Report will cover the period from the date of effectiveness of the STO Program through November of 2010, and will describe the experience of the Exchange with the STO Program in respect of the options classes included by the Exchange in such program.[6] The Report will be submitted on a confidential basis under separate cover within one week of the filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–183 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[5] However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Commentary .11(d) to Rule 1012 and Rule 1101A(b)(vi)(D).

[6] The Report would include the following: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the STO Program; (3) an assessment of the impact of the STO Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the STO Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the STO Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the STO Program.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–183. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–183 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32623 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63589; File No. SR–EDGX–2010–24]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.5

December 21, 2010.

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 December 13, 2010, EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 self-regulatory organization. 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

EDGX proposes to amend EDGX Rule 11.5(a)(2) to provide that the system functionality that cancels any portion of a market order submitted to the Exchange that would execute at a price that is more than $0.50 or 5 percent worse than last sale at the time the order initially reaches the Exchange, whichever is greater, does not apply to Destination-on-Open orders, as defined in Rule 11.5(c)(10). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

As provided in SR–EDGX–2010–14,[3] Exchange Rule 11.5(a)(2) protects market participants from executions at prices that are significantly worse than the last sale at the time of order entry by providing Exchange system functionality that cancels any portion of a market order (as defined in Rule 11.5(a)(2)) that would execute at a price that is 50 cents or 5 percentage points worse than the consolidated last sale, whichever is greater. Any portion of a market order that would otherwise execute outside of these thresholds is immediately cancelled back to the User.[4]

The Exchange proposes to modify Rule 11.5(a)(2) to provide that Destination-on-Open orders, as defined in Rule 11.5(c)(10),[5] are not subject to these market collars.[6] The rationale for this exception is twofold. First, using a reference price calculation for market collar thresholds at the open of trading is problematic because of the potential lack of trading activity just prior to the open and the resulting price dislocation. Therefore, the reference price for a market collar on a Destination-on-Open order could be out of line with the market at the open of the regular trading session. In addition, other Exchanges also address this issue similarly by excluding market on open orders as well.[7]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63163 (October 22, 2010), 75 FR 66408 (October 28, 2010) (SR–EDGX–2010–14).

[4] A User is defined in Exchange Rule 1.5(cc) as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3".

[5] Rule 11.5(c)(10) defines a Destination-on-Open order, in part, as "a market or limit order that instructs the System to route the order to a specified away trading center to participate in said trading center's opening process, without being processed by the System as described below in Rule 11.9(b)(1)."

[6] The Exchange notes that when orders are routed to an away trading center, such away trading centers' collar rules apply, when applicable, regardless of the Exchange's proposed exclusion for Destination-on-Open orders.

[7] *See, e.g.,* Nasdaq Rule 4751(f)(13) which excludes market on open orders from the definition of "collared orders." *See also* Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR–Nasdaq–2009–070).

Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that excluding Destination-on-Open orders from the application of market collars is appropriate in order to avoid the potential dislocation between the reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session. Accordingly, the modifications to Exchange Rule 11.5 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange will issue an information circular to all Members prior to implementation, which will be on or about December 14, 2010.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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)[9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] 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, as specified in Rule 19b–4(f)(6)(iii),[13] which would make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission notes that the proposal is based on the rules of another SRO that similarly excludes market on open orders from its market collar functionality.[15] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2010–24 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–EDGX–2010–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2010–24 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32613 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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 met this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] *See supra* note 7.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63581; File No. SR–NYSEArca–2010–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading Shares of the Grail Western Asset Ultra Short Duration ETF Under NYSE Arca Equities Rule 8.600

December 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that, on December 13, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 the shares of the following under NYSE Arca Equities Rule 8.600: Grail Western Asset Ultra Short Duration ETF ("ETF" or "Fund"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares ("Shares") of the Grail Western Asset Ultra Short Duration ETF under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The ETF will be an actively managed exchange traded fund and is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.[4]

Description of the Shares and the Fund

Grail Advisors, LLC is the Fund's investment manager ("Manager"). Western Asset Management Company is the sub-adviser ("Western Asset" or "Sub-Adviser") of the ETF. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETF. ALPS Distributors, Inc. serves as the distributor of Creation Units for the Fund on an agency basis.

Grail Western Asset Ultra Short Duration ETF

According to the Registration Statement, the ETF's investment objective is maximum current income, consistent with preservation of capital and daily liquidity. The ETF invests, under normal circumstances, primarily in short-term, investment grade fixed income securities. The ETF will typically invest in money market securities and short-term debt securities, including U.S. treasuries and agencies, corporate and bank obligations, asset backed and mortgage backed instruments, commercial paper and other highly rated, short maturity securities. While the ETF may invest in securities of any maturity, under normal circumstances, the average duration of the portfolio is typically expected to be one year or less. Duration is a measure of the underlying portfolio's price sensitivity to changes in interest rates.

Western Asset employs an active, team-managed strategy and utilizes a top-down economic and interest rate outlook, combined with a bottom-up security selection process. When using a "top-down" approach, Western Asset looks first at broad economic factors and market conditions, such as prevailing and anticipated interest rates. On the basis of those factors and conditions, Western Asset selects what it views as optimal interest rates and maturities and chooses certain sectors or industries within the overall market. Western Asset then looks at individual issuers within those sectors or industries to select securities for the investment portfolio. While many of the ETF's investments are expected to be held until maturity, they may be sold depending on market conditions, opportunities and valuations. Western Asset may sell a security before maturity when it is necessary to do so to meet redemption requests. A security may also be sold if Western Asset believes the issuer is no longer as creditworthy, or in order to adjust the average duration of the ETF's investment portfolio (for example, to reflect changes in Western Asset's expectations concerning interest rates), or when Western Asset believes there is superior value in other market sectors or industries.

The ETF invests primarily in investment grade securities (Baa or higher by Moody's; BBB or higher by Standard & Poor's) that are rated by at least one nationally recognized statistical rating organization rating that security, or if unrated, determined by Western Asset to be of comparable quality.

The ETF may invest in securities issued by the U.S. Government, its agencies and instrumentalities and repurchase agreements for these obligations, mortgage-backed and other asset-backed securities, and obligations of U.S. and non-U.S. banks and other foreign private issuers. In addition, the ETF may invest in obligations issued or guaranteed by the governments of Western Europe, Australia, Japan and Canada, and commercial paper, including asset-backed commercial paper. The ETF may only invest in U.S. dollar-denominated securities. It may also invest in securities of other investment companies. Under adverse market conditions, the ETF may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents. Due to the short-term nature of many of the ETF's investments, the ETF may have an annual portfolio turnover rate over 100%.

As discussed below, the ETF may invest in derivative instruments, such as futures and interest rate, total return and credit default swaps. Investments in derivatives must be consistent with the ETF's investment objective and may only be used to manage risk and not to enhance leverage.

The ETF will not invest in non-U.S. equity securities.

Investment Policies of the ETF

The ETF (1) may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other than obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of the ETF's total assets; and (2) regarding concentration, may not invest

[3] The Commission previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR–NYSEArca–2009–114) (order approving listing of Grail McDonnell Fixed Income ETFs).

[4] *See* Preliminary Prospectus on Form N–1A for the Trust, dated August 31, 2010 (File Nos. 333–148082 and 811–22154) (the "Registration Statement"). The descriptions of the ETF and the Shares contained herein are based on information in the Registration Statement.

more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries.

The ETF may not invest more than 15% of its net assets in: (1) Illiquid securities; and (2) Rule 144A securities, including time deposits and repurchase agreements that mature in more than seven days. For this purpose, "illiquid securities" are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

The ETF may invest in mortgage- or other asset-backed securities. Mortgage backed securities in which the Fund invests will be investment grade. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities ("SMBSs") and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. The ETF will not purchase mortgage-related securities or any other assets which in the Sub-Adviser's opinion are illiquid if, as a result, more than 15% of the value of the ETF's net assets will be illiquid.

The ETF may invest in unregistered securities, including Rule 144A securities, that are purchased directly from the issuer or in the secondary market and are subject to limitations on resale.

The ETF may hold preferred stocks. The ETF may purchase or otherwise receive warrants or rights. The ETF may enter into repurchase agreements with banks and broker-dealers. The ETF may engage in reverse repurchase agreements as a means of raising cash to satisfy redemption requests or for other temporary emergency purposes. The ETF may hold zero coupon securities and bank obligations, which include certificates of deposit, bankers' acceptances, and fixed time deposits. The ETF may invest in the securities of other investment companies to the extent permitted by law. The ETF may hold corporate and other debt and fixed income securities; U.S. Government securities; municipal securities; and real estate investment trusts.

Detailed descriptions of the ETF and the Shares; procedures for creating and redeeming Shares; transaction fees and expenses; ETF investments; dividends and distributions; taxes; risks; and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.grailadvisors.com*.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[5] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Fund's Manager and Sub-Adviser each is affiliated with a broker-dealer and has implemented a fire wall with respect to the affiliated broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.[6] Any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. The Manager and Sub-Adviser, each as a Reporting Authority under NYSE Arca Equities Rule 8.600(c)(4), have implemented and will maintain, or are subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio.

Creations and Redemptions of Shares

As described in the Registration Statement, Shares can be purchased by or through an Authorized Participant directly from the ETF only in Creation Units, currently 50,000 Shares, or multiples thereof. Creation Units may be purchased in exchange for a Fund Deposit, which consists of (i) all cash (the "Cash Value"), (ii) a basket of certain in-kind securities and cash ("Partial Cash Value," and together with the in-kind securities ("In-Kind/Cash Basket") or (iii) a basket of securities (the "In-Kind Creation Basket") and a Balancing Amount. In all instances the value of the Fund Deposit will be equal to the value of the Creation Unit.[7]

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the ETF through the Transfer Agent and only on a Business Day. Creation Units generally may be redeemed in exchange for a "Fund Redemption", which consists of

[5] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Manager and Sub-adviser are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[6] The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Fund, and Western Asset, the Sub-Adviser, and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] For an order involving a Creation Unit to be effectuated at the ETF's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the ETF are 2 p.m. Eastern Time for In-Kind/Cash Basket for Cash Value, 2 p.m. Eastern Time for Partial Cash Value and In-Kind/Cash Basket, and 4 p.m. Eastern Time for In-Kind Creation Basket.

(i) A Cash Value (ii) a basket of in-kind securities and Partial Cash Value or (iii) a basket of securities ("In-Kind Redemption Basket") and a Balancing Amount, in all instances equal to the value of a Creation Unit.

The ETF imposes a "Transaction Fee" on purchases or redemptions of Creation Units to be paid by the purchaser or redeemer in cash.

Availability of Information

The ETF's Web site (*http://www.grailadvisors.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the ETF that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the ETF: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[8] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session [9] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the ETF that will form the basis for the ETF's calculation of NAV at the end of the business day [10] as of the close of regular trading on the New York Stock Exchange, generally 4 p.m., Eastern Time. The Web site and information will be publicly available at no charge.

In addition, for the ETF, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the ETF's portfolio, will be disseminated through one or more major market data vendors. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio, provided that illiquid securities, mortgage-related securities and other asset-backed securities will be valued based on the prior business day's closing value, which is the most current value available for such securities. The Portfolio Indicative Value will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. According to the Registration Statement, this approximate value should not be viewed as a "real-time" update of the NAV of the ETF because the approximate value may not be calculated in the same manner as the NAV, which is computed once a day. According to the Registration Statement, the Portfolio Indicative Value is an approximate per-Share value of the ETF's portfolio holdings and does not necessarily reflect the precise composition of the current portfolio of securities held by the ETF at a particular point in time. The quotations for certain investments may not be updated during U.S. trading hours if such holdings do not trade in the U.S., except such quotations may be updated to reflect currency fluctuations.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

On a daily basis, the ETF will disclose on the ETF's Web site for each portfolio security or other financial instrument of the ETF the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the ETF's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Additional information regarding the Shares and the ETF, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the ETF that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 [11] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value per Share will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the ETF. Shares of the ETF will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the ETF; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the ETF may be halted.

[8] The Bid/Ask Price of the ETF is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the ETF and its service providers.

[9] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[10] Under accounting procedures followed by the ETF, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, each ETF will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[11] *See* 17 CFR 240.10A–3.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.[12]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the ETF is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca-2010–117 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR- NYSEArca-2010–117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[12] For a list of the current members of ISG, see *http://www.isgportal.org*. The Exchange notes that many of the components of the Disclosed Portfolio for the ETF may not trade on exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[13] 15 U.S.C. 78f(b)(5).

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 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2010–117 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32513 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63587; File No. SR–NYSEArca–2010–118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF

December 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 15, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 the following Managed Fund Shares under NYSE Arca Equities Rule 8.600: SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[3] ("Shares") under NYSE Arca Equities Rule 8.600: SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF (each a "Fund" and, collectively, the "Funds").[4] The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment advisor to the Funds is AdvisorShares Investments, LLC (the "Advisor"). Strategic Income Management, LLC ("Sub-Advisor" or "SiM") serves as investment sub-advisor to the Funds. The Sub-Advisor is responsible for selecting the Funds' investments according to the Funds' investment objectives, policies and restrictions. Each of the Funds will periodically change the composition of its portfolio to best meet its investment objective. Foreside Fund Services, LLC (the "Distributor") is the principal underwriter and distributor of the Funds' shares. The Bank of New York Mellon Corporation serves as the administrator ("Administrator"), custodian, transfer agent and fund accounting agent for the Funds.

Each Fund is an actively-managed exchange-traded fund and thus does not seek to replicate the performance of a specified index, but uses an active investment strategy to meet its investment objective. Accordingly, the Sub-Advisor manages each Fund's portfolio in accordance with each Fund's investment objective.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission previously approved listing and trading on the Exchange of actively-managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF).

[5] The Trust is registered under the 1940 Act. On October 14, 2010, the Trust filed with the Commission Post-Effective Amendment No. 13 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333–157876 and 811–22110) ("Registration Statement"). The description of the operation of the Trust and the Funds herein is based on the Registration Statement.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Advisor and Sub-Advisor are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.[7] In the event (a) the Advisor or the Sub-Advisor becomes newly affiliated with a broker-dealer, or (b) any new advisor or sub-advisor becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

SiM Dynamic Allocation Diversified Income ETF

According to the Registration Statement, the Fund will seek to provide total return, consisting primarily of reinvestment and growth of income with some long-term capital appreciation. The Fund is considered a "fund-of-funds" that will seek to achieve its investment objective by primarily investing in other exchange-traded funds ("ETFs") that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and exchange-traded products ("ETPs," and, together with ETFs, the "Underlying ETPs") including, but not limited to, exchange-traded notes ("ETNs"), exchange-traded currency trusts and closed-end funds.[8]

The Fund will seek to offer the potential for total return from a high level of income and a low level of capital growth, with exposure to a low level of principal risk. The Fund through its investments in the Underlying ETPs generally will invest at least 60% of its net assets in domestic and international fixed income funds.

The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor's outlook for the economy, the financial markets and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs, if appropriate, when the Sub-Advisor's fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

According to the Registration Statement, under normal market conditions, the Fund's portfolio will generally:

- Invest up to 85% of its assets in Underlying ETPs that hold fixed-income securities as well as cash equivalents;
- Not invest more than 40% of its net assets in Underlying ETPs that primarily hold equity securities; and
- Invest up to 20% of its assets in any single Underlying ETP.

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

SiM Dynamic Allocation Growth Income ETF

According to the Registration Statement, the Fund will seek to provide total return, consisting primarily of long term capital appreciation with some reinvestment and growth of income. The Fund is considered a "fund-of-funds" that will seek to achieve its investment objective by primarily investing in Underlying ETPs that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and ETPs including, but not limited to, ETNs, exchange-traded currency trusts and closed-end funds.[9]

In general, the Fund will seek to offer investors the potential for total return from a low to medium level of income and a medium to high level of capital growth, while exposing them to a medium to high level of principal risk. The Fund, through its investments in the Underlying ETPs, generally will invest at least 60% of its net assets in domestic and international equity funds.

The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor's outlook for the economy, the financial markets and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs when the Sub-Advisor's fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

Under normal market conditions, the Fund's portfolio will generally:

- Invest up to 85% of its assets in Underlying ETPs that hold equity securities as well as cash equivalents;
- Not invest more than 40% of its net assets in Underlying ETPs that primarily hold fixed income securities; and
- Invest up to 20% of its assets in any single Underlying ETP.

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

Other Investments

The Funds and the Underlying ETPs may invest in equity securities representing ownership interests in a company or partnership and that consist

[7] With respect to the Funds, the Exchange represents that the Advisor, as the investment advisor of the Funds, and SiM as the Sub-Advisor, and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds.

[9] *See* note 7 *supra* [sic].

of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.[10] The Funds may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Funds may enter into reverse repurchase agreements as part of the Funds' investment strategy.

The Funds may invest in U.S. government securities and in U.S. Treasury zero-coupon bonds. The Funds may invest in shares of real estate investment trusts ("REITs"), which are pooled investment vehicles which invest primarily in real estate or real estate related loans. To respond to adverse market, economic, political or other conditions, the Funds may invest 100% of their total assets, without limitation, in high-quality short-term debt securities and money market instruments.

The Funds may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. The Funds may not invest 25% or more of total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Funds will not invest 25% or more of total assets in any investment company that so concentrates.

Underlying ETPs will be listed on a national securities exchange. Except for Underlying ETPs that may hold non-U.S. issues, the Funds will not otherwise invest in non-U.S. issues.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 [11] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") and the Disclosed Portfolio will be made available to all market participants at the same time.

Creation and Redemption of Shares

The Funds will offer and issue shares at NAV only in aggregated lots of 50,000 or more shares (each a "Creation Unit" or a "Creation Unit Aggregation"), generally in exchange for: (i) A basket of portfolio securities (the "Deposit Securities"); and (ii) an amount of cash (the "Cash Component"). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit." Shares are redeemable only in Creation Unit Aggregations, and, generally, in exchange for portfolio securities and a specified cash payment. Creations or redemptions of Shares will be effected by or through an Authorized Participant, as described in the Registration Statement, or a Depository Trust Company participant.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each Business Day,[12] immediately prior to the opening of business on the NYSE, the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for a Fund. The identity and number of shares of the Deposit Securities required for a Fund Deposit for a Fund will change as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Advisor with a view to the investment objective of a Fund.[13]

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, the Administrator, through the NSCC, also will make available on each Business Day, the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of a Fund.

Net Asset Value

According to the Registration Statement, the NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV per Share for the Funds will be calculated by the Administrator and determined as of the close of the regular trading session on the NYSE Arca (ordinarily 4 p.m., Eastern Time) on each day that the Exchange is open.

In computing each Fund's NAV, each Fund's securities holdings will be valued based on their last readily available market price. Price information on listed securities is taken from the exchange where the security is primarily traded. Securities regularly traded in an over-the-counter market are valued at the latest quoted sales price on the primary exchange or national securities market on which such securities are traded. Securities not listed on an exchange or national securities market, or securities in which there was no last reported sales price, are valued at the most recent bid price. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith by the Sub-Advisor in accordance with procedures adopted by the Funds' Board of Trustees.

Availability of Information

The Funds' Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for

[10] The Funds will hold only equity securities traded in the U.S. on registered exchanges.

[11] 17 CFR 240.10A–3.

[12] A "Business Day" with respect to the Funds is any day on which the New York Stock Exchange ("NYSE") is open for business.

[13] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

[14] The Bid/Ask Price of the Funds will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

the Funds' calculation of NAV at the end of the business day.[15]

On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Funds. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Funds' Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. Information regarding market price and trading volume of the Underlying ETPs will be continually available on a real-time basis throughout the day from major market data vendors. Last sale and closing price information for Underlying ETPs will be available on the Web site of the national securities exchange on which such securities are listed or through major market data vendors. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the securities and/or financial instruments comprising the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each of the Funds on a daily basis and to provide a close estimate of that value throughout the Core Trading Session.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[16] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG, including those exchanges trading the Underlying ETPs and other securities held by the Funds, described above under "Other Investments".[17]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued

[15] Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[16] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[17] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[18] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–118 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2010–118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2010–118 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32608 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63593; File No. SR–NYSE–2010–83]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Permanent the Pilot Program That Offers Liquidity Takers a Reduced Transaction Fee Structure for Certain Bond Trades Executed on the NYSE Bonds System

December 21, 2010.

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 December 16, 2010, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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 make permanent the pilot program that offers liquidity takers a reduced transaction fee structure for certain bond trades executed on the NYSE Bonds SM system ("NYSE Bonds"). The text of the proposed rule change is available at the Exchange's principal office, *http://www.nyse.com,* the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposes to make permanent the pilot program that offers liquidity takers a reduced transaction fee structure for certain bond trades executed on the NYSE Bonds SM system ("NYSE Bonds"). The pilot program commenced in January 2008 [3] and has been extended several times since that time.[4] It is scheduled to expire on December 31, 2010.

The pilot program reduces transaction fees charged to liquidity takers for transactions executed on NYSE Bonds with a staggered transaction fee schedule based on the number of bonds purchased or sold in excess of ten (10) bonds. When the liquidity taker purchases or sells from one to ten (10) bonds, the Exchange will charge an execution fee of $0.50 per bond; when the liquidity taker purchases or sells from eleven (11) to twenty five (25) bonds, the Exchange will charge an execution fee of $0.20 per bond, and when the liquidity taker purchases or sells twenty six (26) bonds or more, the Exchange charges an execution fee of $0.10 per bond. The Exchange imposes a $100 execution fee cap per transaction.

For example, if a liquidity taker purchases or sells five (5) bonds, the Exchange charges $.50 per bond, or a total of $2.50 for execution fees. If a liquidity taker purchases or sells twenty (20) bonds, the Exchange charges $.20 per bond or a total of $4.00 for execution fees. If a liquidity taker purchases or sells thirty (30) bonds, the Exchange charges $.10 per bond or a total of $3.00 for execution fees.

The bond liquidity taker fee schedule has been in place for nearly two years and the Exchange believe that it is an equitable allocation of fees for users of the NYSE bond platform. As such, the Exchange believes that it is appropriate at this time to adopt the fee schedule on a permanent, rather than a pilot, basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 [5] of the Securities Exchange Act of 1934 (the "Act") [6] in general and Section 6(b)(4) of the Act [7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–83 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2010–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–NYSE–2010–83 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32622 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 57176 (January 18, 2008), 73 FR 4929 (January 28, 2008) (SR–NYSE–2008–04).

[4] *See* Securities Exchange Act Release Nos. 57823 (May 15, 2008), 73 FR 29804 (May 22, 2008) (SR–NYSE–2008–38), 59178 (December 30, 2008), 74 FR 748 (January 7, 2009) (SR–NYSE–2008–137), 61201 (December 18, 2009), 74 FR 68651 (December 28, 2009) (SR–NYSE–2009–127), 62455 (July 6, 2010), 75 FR 40004 (July 13, 2010) (SR–NYSE–2010–51).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78a.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63590; File No. SR–EDGA–2010–25]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.5

December 21, 2010.

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 December 13, 2010, EDGA Exchange, Inc. (the "Exchange" or the "EDGA") 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 self-regulatory organization. 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

EDGA proposes to amend EDGA Rule 11.5(a)(2) to provide that the system functionality that cancels any portion of a market order submitted to the Exchange that would execute at a price that is more than $0.50 or 5 percent worse than last sale at the time the order initially reaches the Exchange, whichever is greater, does not apply to Destination-on-Open orders, as defined in Rule 11.5(c)(10). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As provided in SR–EDGA–2010–15,[3] Exchange Rule 11.5(a)(2) protects market participants from executions at prices that are significantly worse than the last sale at the time of order entry by providing Exchange system functionality that cancels any portion of a market order (as defined in Rule 11.5(a)(2)) that would execute at a price that is 50 cents or 5 percentage points worse than the consolidated last sale, whichever is greater. Any portion of a market order that would otherwise execute outside of these thresholds is immediately cancelled back to the User.[4]

The Exchange proposes to modify Rule 11.5(a)(2) to provide that Destination-on-Open orders, as defined in Rule 11.5(c)(10),[5] are not subject to these market collars.[6] The rationale for this exception is twofold. First, using a reference price calculation for market collar thresholds at the open of trading is problematic because of the potential lack of trading activity just prior to the open and the resulting price dislocation. Therefore, the reference price for a market collar on a Destination-on-Open order could be out of line with the market at the open of the regular trading session. In addition, other Exchanges also address this issue similarly by excluding market on open orders as well.[7]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that excluding Destination-on-Open orders from the application of market collars is appropriate in order to avoid the potential dislocation between the reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session. Accordingly, the modifications to Exchange Rule 11.5 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange will issue an information circular to all Members prior to implementation, which will be on or about December 14, 2010.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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)[9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

[3] *See* Securities Exchange Act Release No. 63161 (October 22, 2010), 75 FR 66405 (October 28, 2010) (SR–EDGA–2010–15).

[4] A User is defined in Exchange Rule 1.5(cc) as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3".

[5] Rule 11.5(c)(10) defines a Destination-on-Open order, in part, as "a market or limit order that instructs the System to route the order to a specified away trading center to participate in said trading center's opening process, without being processed by the System as described below in Rule 11.9(b)(1)."

[6] The Exchange notes that when orders are routed to an away trading center, such away trading centers' collar rules apply, when applicable, regardless of the Exchange's proposed exclusion for Destination-on-Open orders.

[7] *See, e.g.,* Nasdaq Rule 4751(f)(13) which excludes market on open orders from the definition of "collared orders." *See also* Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR–Nasdaq–2009–070).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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 met this requirement.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] 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, as specified in Rule 19b–4(f)(6)(iii),[13] which would make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission notes that the proposal is based on the rules of another SRO that similarly excludes market on open orders from its market collar functionality.[15] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2010–25 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–EDGA–2010–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2010–25 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32614 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] *See supra* note 7.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63582; File No. SR–FINRA–2010–055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend FINRA Rule 6140 (Other Trading Practices)

December 21, 2010.

On October 29, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend FINRA Rule 6140 to eliminate the provisions regarding the handling of stop orders, delete definitions relating to stop stock transactions, and to relocate the definition of "initial public offering."

Section 19(b)(2) of the Act–[4] provides that within forty-five days of the publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall either approve or disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for the filing submitted by FINRA will be December 27, 2010.[5]

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, relating to the elimination of the FINRA provisions regarding the handling of stop orders and the deletion of definitions relating to stop stock transactions, and the comment letters that have been submitted in connection with the filing.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 10, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32516 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release Nos. 63256 (November 5, 2010), 75 FR 69503 (November 12, 2010).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63580; File No. SR–CBOE–2010–114]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Opening System

December 20, 2010.

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 December 8, 2010, the Chicago Board Options Exchange, Incorporated ("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 Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 6.2B, *Hybrid Opening System ("HOSS").* The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

HOSS is a feature within CBOE's Hybrid System that is used for conducting trading rotations. The Exchange is proposing to amend the HOSS rule in various respects.

First, to have more flexibility in a manner that is consistent with other CBOE rules with order eligibility provisions, the Exchange is proposing to amend the HOSS rule to include an order eligibility provision. In particular, Rule 6.2B will be amended to provide that the Exchange shall designate the eligible order size, eligible order type, eligible order origin code (*i.e.,* public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) that HOSS will accept for rotations on a class-by-class basis. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (*e.g.,* permit certain market-maker orders but not others to be eligible). The Rule will also be amended to delete a reference to spread orders and contingency order [sic] not being eligible to participate in HOSS opening trades or in the determination of the opening price, expected opening price or expected opening size. (As revised, the Exchange would determine whether to designate these orders types as eligible for HOSS on a class-by-class basis, just as it would for any other order type.) Any changes to the HOSS order eligibility parameters determined by the Exchange would be announced to CBOE Trading Permit Holders via Regulatory Circular.

This proposed change to include order eligibility requirements within the HOSS rule is consistent with the order eligibility requirements contained in other rules that pertain to features within CBOE's Hybrid System, such as the order eligibility requirements for Rule 6.13A, *Simple Auction Liaison (SAL)* (SAL is a feature within the Hybrid System that auctions marketable orders for price improvement over the national best bid and offer), and Rule 6.14, *Hybrid Agency Liaison (HAL)* (HAL is a feature within the Hybrid System that provides automated order handling in designated classes trading on Hybrid for qualifying electronic orders that are not automatically executed by the Hybrid System). The proposed rule change is also consistent with the provisions of Rule 6.53, *Certain Types of Orders Defined,* which provides that the classes and/or systems (*e.g.,* the HOSS, SAL and HAL systems) for which the orders types described in Rule 6.53 shall be available will be as provided in the Exchange Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

Second, the Exchange is proposing to adopt new Interpretation and Policy .04 regarding the applicable allocation algorithm [5] for HOSS and to make related changes to Interpretation and Policy .03. Currently, there are various rotations procedures set forth in Rule 6.2B, such as the regular HOSS rotation procedure described in Rule 6.2B(a)–(g), the modified HOSS rotation procedure for Hybrid 3.0 classes described in Rule 6.2B.01, and the HOSS Hybrid Agency Liaison ("HAL") for openings (referred to herein as the "HOSS HAL–O" procedure) described in Rule 6.2B.03. Right now the Rule does not specifically identify the applicable allocation algorithm for the HOSS and modified HOSS rotation procedures. Paragraph (c)(iv) of the Rule simply states that in determining the priority of orders and quotes to be traded, the System gives priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. For the HOSS HAL–O rotation procedure, Rule 6.2B.03 provides that the system gives priority to public customer market orders first (with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority), then to multiple quotes and orders whose price is better than the opening price (with multiple quotes and orders being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B), then to limit orders and quotes at the opening price (with multiple orders and quotes ranked in accordance with the allocation algorithm in effect for the class pursuant to Rule 6.45A or 6.45B).

The Exchange is proposing to remove the specific allocation algorithm description for HOSS HAL–O rotations in Interpretation and Policy .03(c)(i) of Rule 6.2B. Instead, the provision will be amended provide [sic] that, in determining the priority of orders and

[5] The allocation algorithms include price-time, pro-rata, and the ultimate matching algorithm ("UMA") base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference, and market turner. *See* Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System.*

quotes to be traded, the System will give priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price (this description is the same as is currently provided in Rule 6.2B(c)(iv) and noted above). The Exchange is also proposing to adopt new Interpretation and Policy .04 to Rule 6.2B. Proposed Interpretation and Policy .04 to Rule 6.2B will provide that the Exchange may determine on a class-by-class basis which electronic allocation algorithm would apply for rotations (whether using the HOSS, modified HOSS or HOSS HAL–O rotation procedure). This change will also provide the Exchange with additional flexibility to permit the allocation algorithm in effect for a rotation to be different from the allocation algorithm in effect for the option class. All pronouncements regarding allocation algorithm determinations by the Exchange will be announced to CBOE Trading Permit Holders via Regulatory Circular.

In conjunction with this change, the Exchange is also proposing to modify Rule 6.2B to codify and describe the manner in which HOSS handles opening imbalances in series that open at a minimum price increment (*e.g.,* a series that opens at a price of $0.05 when the series is quoted in $0.05 increments and a series that opens at a price of $0.01 when the series is quoted in $0.01 increments). In those scenarios, HOSS opens even if a sell market order imbalance exists. In addition, the Exchange may determine to apply a separate electronic allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance. As indicated above, pronouncements regarding allocation algorithm determinations will be announced via Regulatory Circular.

The matching algorithm applied for rotations for each option class will be pursuant to Rule 6.45A or 6.45B, as applicable. Thus, the Exchange is not creating any new algorithms, but is amending Rule 6.2B to make clear that the Exchange may determine the applicable allocation algorithm for rotations as described above and to provide the flexibility for the Exchange to choose an algorithm from among the existing algorithms to be applied to rotations, rather than simply defaulting to the algorithm in effect for intra-day trading in the option class.

Finally, the Exchange is proposing non-substantive amendments to Rule 6.2B, so that the rule text can generally be more consistently organized, numbered and worded. For example, the Exchange is proposing to add descriptive headings to each section of the rule, and to replace multiple references to Exchange determinations being announced via Regulatory Circular with a single reference in proposed Interpretation and Policy .05, which will provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.2B and the Interpretations and Policies thereunder will be announced to Trading Permit Holders via Regulatory Circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5) of the Act[7] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed change would provide more flexibility and clarity in its HOSS rule. The Exchange also believes that the proposed HOSS order eligibility provision is consistent with order eligibility provisions in other existing rules, such as the SAL, HAL and order type rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[8] and Rule 19b–4(f)(6) thereunder.[9] A proposed rule change filed under Rule 19b–4(f)(6)[10] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–114 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–2010–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–114 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32512 Filed 12–27–10; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0081]

Rate for Assessment on Direct Payment Fees to Representatives in 2011

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (Act), 42 U.S.C. 406 (d), and 1383(d)(2)(C), is 6.3 percent for 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey Blair, Acting Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone: (410) 965–3157, e-mail *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: Section 406 of Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services we must perform to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206(d) of the Act (42 U.S.C. 406(d)). That legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under sections 206(a)(4) or 206(b)(1) of the Act before the application of the assessment. For subsequent years, the legislation requires us to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. In Public Law 108–203, the Social Security Protection Act of 2004 (SSPA), Congress also imposed a dollar cap on the amount of the assessment so that the assessment may not exceed the lesser of that dollar cap or the amount determined using the assessment percentage rate. That dollar cap is subject to annual adjustment and remains at the current rate of $83, as announced in the **Federal Register** on November 30, 2010, at 75 FR 74123.

Beginning in 2005, sections 302 and 303 of the SSPA temporarily extended the direct payment of fees to attorneys in cases under Title XVI of the Act and to eligible non-attorney representatives in cases under Title II and Title XVI of the Act. Those provisions were made permanent by Public Law 111–142, the Social Security Disability Applicants' Access to Professional Representation Act of 2010. Fees directly paid under these provisions are also subject to the assessment.

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2011. We will continue to review our costs for these services on a yearly basis.

Dated: December 17, 2010.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finance and Management.

[FR Doc. 2010–32566 Filed 12–27–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Performance and Handling Requirements for Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 23, 2010, vol. 75, no. 184, page 58014. The FAA requires that certain performance information be provided in the Rotorcraft Flight Manual in order to show compliance to the regulatory requirements. The flight manual, by regulation, must be furnished with each aircraft.

DATES: Written comments should be submitted by January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0726.

Title: Performance and Handling Requirements for Rotorcraft.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In order to determine that a rotorcraft is a safe vehicle, an applicant for a type certificate must show compliance to specific minimum requirements. In order to show compliance, an applicant must substantiate the type design through analysis, testing, design limitations, and other acceptable means. This substantiation requires that certain performance information for safe operation of the rotorcraft be presented, in the form of tables, diagrams, or charts, in the flight manual. FAA engineers and designated engineers review the required data submittals to determine that the rotorcraft complies with the minimum safety requirements for rotorcraft performance and that the rotorcraft has no unsafe features.

Respondents: Approximately 4 normal or transport category rotorcraft certification applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5.5 hours.

Estimated Total Annual Burden: 22 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and

[12] 17 CFR 200.30–3(a)(12).

sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on December 20, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–32585 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Criteria for Internet Communications of Aviation Weather, NOTAM, and Aeronautical Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 23, 2010, vol. 75, no. 184, page 58015. An Advisory Circular (AC) establishes criteria for Qualified Internet Communications Providers (ICP), who provide access to aviation weather, Notices to Airmen (NOTAM), and aeronautical data via the Public Internet. The information collected is used to determine the provider's eligibility.

DATES: Written comments should be submitted by January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0672.

Title: Criteria for Internet Communications of Aviation Weather, NOTAM, and Aeronautical Data.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: Any interested person or organization desiring to become a QICP shall provide the FAA Aviation Weather and Policy Requirements, AJP–B1 with a written application documenting their capability to meet the QICP criteria. The purpose of the information is to ensure the reliability, accessibility and security of aviation weather data, NOTAM and aeronautical data accessed via the Internet as well as to encourage data providers to identify the approval status (*e.g.,* experimental or operational) of aviation weather products.

Respondents: Approximately 6 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 2,740 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 20, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–32582 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Decision To Issue Buy American Waivers for Foreign Object Debris (FOD) Detection Equipment

AGENCY: Federal Aviation Administration (FAA), U.S. DOT.

ACTION: Notice of Decision.

SUMMARY: On August 5, 2010, the FAA published a notice in the **Federal Register** advising manufacturers of Foreign Object Debris (FOD) detection equipment that it was considering issuing waivers to Buy American requirements of 49 USC 50101 to foreign manufacturers of FOD detection equipment (**Federal Register**/Vol. 75, No. 150/Thursday, August 5, 2010/ Notices, page 47344) The FAA has determined that two manufacturers with products containing 60% or more U.S. content and U.S. final assembly are able to produce sufficient and reasonable amounts of FOD detection equipment meeting the requirements of FAA Advisory Circular 150/5220–24. Subsequently, the FAA will issue Buy American Waivers based on the 60% U.S. content and U.S. final assembly. The FAA will not issue any Buy American Waivers based on insufficient quantity to foreign manufacturers.

DATES: This notice becomes effective December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Frank San Martin, Manager, Airports Financial Assistance, APP 500, Room 620, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION: On September 30, 2009 the FAA published Advisory Circular 150/5220–24, Airport Foreign Object Debris (FOD) detection equipment, detailing system requirements at airports. However, while developing this Advisory Circular the FAA tested equipment from a variety of FOD detection equipment manufacturers, including some manufacturers from outside of the United States. Compliance with the Buy American requirements (49 U.S.C. 50101) is required for projects funded under the Airport Improvement Program

(AIP). To determine if there were any U.S. manufacturers that can produce sufficient and reasonable amounts of stationary FOD detection systems; the FAA issued a notice in the **Federal Register** on August 5, 2010 requesting information from both domestic and foreign manufacturers producing FOD detection equipment (75 FR 47344).

Following the **Federal Register** notice the FAA received information from five companies indicating that they manufacturer stationary FOD detection equipment meeting the requirements of Advisory Circular 150/5220–24. The five companies were: Trex Aviation Systems, which is based in San Diego, CA; QinetiQ Ltd., which is based in the United Kingdom but has a manufacturing facility in Massachusetts; Stratech Systems Limited, which is based in Singapore; Magna BSP Ltd., which is based in Israel; Rheinmetall Italia S.P.A., which is based in Italy; and X-Sight Systems Inc., which is based in Israel.

Based on the information received the FAA identified two companies manufacturing stationary FOD detection systems in the United States: Trex Aviation Systems and QinetiQ. Although both Trex Aviation Systems and QinetiQ produce their FOD detection systems in the United States their systems do not fully meet the Buy American content requirements, which require that the product be manufactured with one hundred percent U.S. components and subcomponents (49 U.S.C. 50101). As a result the FAA will issue a Nationwide Buy American Waiver for the Trex Aviation Systems' FOD Finder XF and QinetiQ's Tarsier FOD System based on the 60% U.S. content and U.S. final assembly waiver permitted in 49 U.S.C. 50101(b)(3). With the presence of these two manufacturers in the United States the FAA has determined there is sufficient quantity and consequently there is no justification for issuing any Buy American Waivers to foreign manufacturers based on insufficient quantity at this time. In the past the FAA has concluded that when there are two or more manufacturers in a particular market sufficient quantity may exist; as concluded in the Buy American Waiver determinations related to Automated Weather Observing Systems (AWOS) and airfield lighting equipment.

While the FAA is not at this time issuing any Buy American Waivers to foreign manufacturers, if in the future these foreign companies begin assembly in the United States and can meet the 60% U.S. content and U.S. final assembly waiver requirement under 49 U.S.C. 0101(b)(3) the FAA will reevaluate their status.

This "Nationwide Waiver" will allow Trex Aviation Systems' FOD Finder XF and QinetiQ's Tarsier FOD System to be used on AIP funded projects without having to receive separate waivers for each project. Having a nationwide waiver enables projects to start quickly without having to wait for the Buy American analysis to be completed for every project, while still assuring the funds used for airport projects under the statute are being directed to manufacturers that meet the Buy American requirements. A complete list of items that have been granted a Nationwide Buy American Waiver can be found on the FAA Web site at *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/* at the tab entitled, Equipment Meeting Buy American Requirements.

Issued in Washington, DC on December 17, 2010.

Frank San Martin,

Manager, Airports Financial Assistance Branch.

[FR Doc. 2010–32578 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–62]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 18, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0766 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to e3at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Frances Shaver, (202) 267–4059, Office of Rulemaking (ARM–207), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 21, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2010–0766.

Petitioner: Airbus SAS.

Section of 14 CFR Affected: § 25.841(a)(2)(i) and (ii), and (a)(3).

Description of Relief Sought: The petitioner seeks relief of § 25.841(a)(2)(i) and (ii), and (a)(3) to allow cabin decompressions which can occur from uncontained engine-rotor failures that

result in holes in the fuselage exceeding CFR-specified dimensions.

[FR Doc. 2010–32505 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Mississippi Division; Rescinding the Notice of Intent for an Environmental Impact Statement (EIS): Harrison, George, Greene, Jackson, Perry, and Stone Counties, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an EIS.

SUMMARY: This notice rescinds the Notice of Intent for preparing an Environmental Impact Statement (EIS) for proposed highway, State Route 15, to provide a connection between Interstate 10 and U.S. 98 near Beaumont, Harrison, George, Greene, Jackson, Perry, and Stone Counties, Mississippi. The original Notice of Intent for this EIS process was published in the **Federal Register** on May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Claiborne Barnwell, Project Development Team Leader, Federal Highway Administration, Mississippi Division, 100 West Capitol Street, Suite 1026, Jackson, Mississippi 39269, *Telephone:* (601) 965–4217.

SUPPLEMENTARY INFORMATION:

Background

The Federal Highway Administration (FHWA) in cooperation with the Mississippi Department of Transportation (MDOT) initiated an Environmental Impact Statement (EIS) with a Notice of Intent May 28, 2009, to provide a connector road between Interstate 10 and U.S. 98.

Due to funding constraints this Notice of Intent is rescinded.

Andrew H. Hughes,

Division Administrator, Mississippi Federal Highway Administration, Jackson, Mississippi.

[FR Doc. 2010–32422 Filed 12–27–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on October 18, 2010 (75 FR 63889).

DATES: Comments must be submitted on or before January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 18, 2010, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 75 FR 63889. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden. The proposed requirements are being submitted for clearance by OMB as required by the PRA.

Title: Safety Integration Plans.

OMB Control Number: 2130–0557.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB), working in conjunction with each other, issued joint final rules establishing procedures for the development and implementation of safety integration plans ("SIPs" or "plans") by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA uses the information collected, notably the required SIPs, to maintain and promote a safe rail environment by ensuring that affected railroads (Class Is and some Class IIs) address critical safety issues unique to the amalgamation of large, complex railroad operations.

Annual Estimated Burden Hours: 528 hours.

Title: Locomotive Crashworthiness.

OMB Control Number: 2130–0564.

Type of Request: Revision of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: In a final rule published June 28, 2006, the Federal Railroad Administration (FRA) issued

comprehensive standards for locomotive crashworthiness. These crashworthiness standards are intended to help protect locomotive cab occupants in the event of a locomotive collision. The collection of information is used by FRA to ensure that locomotive manufacturers and railroads meet minimum performance standards and design load requirements for newly manufactured and re-manufactured locomotives in order to help protect locomotive cab occupants in the event that one of these covered locomotives collides with another locomotive, the rear of another train, a piece of on-track equipment, a shifted load on a freight car on an adjacent parallel track, or a highway vehicle at a rail-highway grade crossing.

Annual Estimated Burden Hours: 6,544 hours.

Title: Safety Appliance Concern Recommendation Report; Guidance Checklist Forms.

OMB Control Number: 2130–0565.

Type of Request: Revision of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.4(a)–(q).

Abstract: In an ongoing effort to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations, FRA has developed a safety concern recommendation report form, and a group of guidance checklist forms that facilitate railroad, rail car owner, and rail equipment manufacturer compliance with agency Railroad Safety Appliance Standards regulations. In lieu of completing an official inspection report (Form FRA F 6180.96), which takes subject railroad equipment out of service and disrupts rail operations, Form FRA F 6180.4a enables Federal and State safety inspectors to report to agency headquarters systemic or other safety concerns. FRA headquarters safety specialists can then contact railroads, car owners, and equipment manufacturers to address the reported issue(s) and institute necessary corrective action(s) in a timely fashion without unnecessarily having to take affected rail equipment out of service, unless deemed defective. Forms FRA F 6180.4(b)–(q) are used in conjunction with the Special Inspection of Safety Appliance Equipment form (Form FRA F 6180.4) to assist Federal Motive, Power, and Equipment (MP&E) field inspectors in ensuring that critical sections of 49 CFR part 231 (Railroad Safety Appliance Standards), pertaining to various types of freight equipment, are complied with through use of a check-off list. By simplifying their demanding work, check-off lists for 16 essential sections of part 231 ensure that FRA MP&E field personnel completely and thoroughly inspect each type of freight car for compliance with its corresponding section in part 231. The Guidance Checklist forms may later be used by state field inspectors as well. FRA believes that this collection of information will result in improved construction of newly designed freight cars and improved field inspections of all freight cars currently in use. This, in turn, will serve to reduce the number of accidents/incidents and corresponding injuries and fatalities that occur every year due to unsafe or defective equipment that was not promptly repaired/replaced.

Annual Estimated Burden Hours: 168 hours.

Title: Passenger Train Emergency Systems.

OMB Control Number: 2130–0576.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form Number(s): N/A.

Abstract: The collection of information is due to passenger train emergency regulations set forth in 49 CFR part 238 to further the safety of passenger train occupants through both enhancements and additions to FRA's existing requirements. The collection of information is used by FRA, railroad employees, rescue workers, and the public. Emergency responders use the information collected to be able to quickly find and understand how to operate passenger cars' emergency windows, doors, and roof hatches so that they can successfully perform their jobs and save lives. The information collected is used by train passengers to: (1) Recognize and immediately report potential emergencies train crew members; (2) recognize hazards; (3) recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and (4) recognize the potential special needs of fellow passengers, such as children, the elderly, and disabled, during an emergency; and (5) know how to quickly and safely evacuate the train in the event of an emergency, such as a collision, derailment, explosion, fire, or some other unanticipated occurrence. Luminescent or lighted emergency exit markings are used by train passengers and emergency responders to determine where the closest and most accessible emergency exit is located as well as how to operate the emergency exit mechanisms. Records of the inspection, maintenance, and repairs of emergency window and door exits and operational efficiency tests are used by FRA inspectors to monitor railroads' regulatory compliance with this Part.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer, or via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 21, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–32557 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0173; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Rice Beaufort Double Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Rice Beaufort Double trailers are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991 Rice Beaufort Double trailers that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible

for importation into the United States because they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 Rice Beaufort Double trailers,) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 27, 2011.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. 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.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.*

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC ("JK"), of Baltimore, Maryland (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 1991 Rice Beaufort Double trailers are eligible for importation into the United States. The vehicles which JK believes are substantially similar are 1991 Rice Beaufort Double trailers that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS. The petitioner states that it compared non-U.S. certified 1991 Rice Beaufort Double trailers to their U.S.-certified counterparts, and found the vehicles to be substantially similar to the U.S. certified model 1991 Rice Beaufort Double trailers.

The petitioner contends that the nonconforming 1991 Rice Beaufort Double trailers are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of conforming reflex reflectors, tail lamps, license plate lamps, rear side marker lamps, front side marker lamps, intermediate side markers lamps, rear identification lamps, and front and rear clearance lamps, to achieve compliance with the standard.

Standard No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* inspection of all vehicles and replacement of any nonconforming tires with ones that meet the standard.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* installation of a tire information placard, and inspection of all vehicles and replacement of any nonconforming rims with ones that meet the standard.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 20, 2010.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2010–32559 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0174; Notice 1]

The Goodyear Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) [1] has determined that certain Goodyear commercial truck tires manufactured between April 2007 and July 2010 do not fully comply with

[1] The Goodyear Tire & Rubber Company (Goodyear) is a State of Ohio corporation that manufactures replacement motor vehicle equipment.

the requirements of paragraph S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 Kilograms (10,000 Pounds) and Motorcycles.* Goodyear has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* dated August 12, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Goodyear has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Goodyear's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 43,887 Goodyear G622 LR–F commercial truck tires manufactured from April 2007 to July 2010. A total of approximately 38,991 of these tires have been delivered to Goodyear's customers in the United States and Canada.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.[2]

Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

> S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less than 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires. . .
>
> (f) The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area;

Goodyear explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires incorrectly identifies the number of plies as "Tread 5 Plies Steel" when in fact it should be identified as "Tread 4 Plies Steel" on the sidewall of the tires as required by paragraph S6.5(f) of FMVSS No. 119.

Goodyear also explains that while the non-compliant tires are mislabeled, all of the tires included in this petition meet or exceed the performance requirements of FMVSS No. 119.

Goodyear argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

Goodyear also points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

Goodyear additionally states that it has corrected the affected tire molds and all future production will have the correct material shown on the sidewall.

In summation, Goodyear believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 119 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, and should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 27, 2011.

[2] Goodyear's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Goodyear as a replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 38,991 tires that were delivered to its customers in the United States. However, the agency cannot relieve Goodyear distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Goodyear recognized that the subject noncompliance existed. Those tires must be brought into conformance, exported, or destroyed. In addition, any of the affected tires that Goodyear has not delivered to its customers must be brought into compliance, exported or destroyed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: December 20, 2010.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2010–32558 Filed 12–27–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before January 27, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1148.

Type of Review: Extension without change to a currently approved collection.

Title: EE–113–90 (TD 8324) Final and Temporary regulations Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.

Abstract: These temporary and final regulations provide rules concerning the taxation of, and reporting and withholding on, employee business expense reimbursements and other expense allowance arrangements.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 709,728 hours.

OMB Number: 1545–1746.

Type of Review: Extension without change to a currently approved collection.

Title: Form 13094—Recommendation for Juvenile Employment with the Internal Revenue Service.

Form: 13094.

Abstract: The data collected on the form provides the Internal Revenue Service with a consistent method for making suitability determination on juveniles for employment within the Service.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 208 hours.

OMB Number: 1545–1352.

Type of Review: Extension without change to a currently approved collection.

Title: PS–276–76 (Final) Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.

Abstract: This regulation prescribes rules for determining the tax treatment of gain from the disposition of natural resource recapture property in accordance with Internal Revenue Code section 1254. Gain is treated as ordinary income in an amount equal to the intangible drilling and development costs and depletion deductions taken with respect to the property. The information that taxpayers are required to retain will be used by the IRS to determine whether a taxpayer has properly characterized gain on the disposition of section 1254 property.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,000 hours.

OMB Number: 1545–2038.

Type of Review: Extension without change to a currently approved collection.

Title: TD F–90–22.1, Report of Foreign Bank and Financial Accounts.

Form: TD F 90–22.1.

Abstract: This information is collected because of its high degree of usefulness in criminal, tax, or regulatory investigations or procedures or in the conduct of intelligence or counter intelligence activities, including analysis, to protect against international terrorism. Respondents include all United States persons who have a financial interest in or signature or other authority over foreign financial accounts with an aggregate value of over $10,000.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 93,921 hours.

OMB Number: 1545–2181.

Type of Review: Extension without change to a currently approved collection.

Title: REG–120399–10—Affordable Care Act Notice of Patient Protections.

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, prohibition on discrimination in favor of highly compensated individuals, and patient protections.

Respondents: Private sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 33,000 hours.

OMB Number: 1545–2177.

Type of Review: Extension without change to a currently approved collection.

Title: REG–112841–10—Indoor Tanning Services; Cosmetic Services; Excise Tax.

Abstract: This document contains final and temporary regulations that provide guidance on the indoor tanning services excise tax imposed by the Patient Protection and Affordable Care Act of 2010. These final and temporary regulations affect persons that use, provide, or pay for indoor tanning services. The text of the temporary regulations also serves as the text of the proposed regulations (REG–112841–10) set forth in the notice of proposed rulemaking on this subject.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–2180.

Type of Review: Extension without change to a currently approved collection.

Title: REG–120399–10—Affordable Care Act Notice of Rescission.

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, prohibition on discrimination in favor of highly compensated individuals, and patient protections.

Respondents: Private sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 25 hours.

OMB Number: 1545–1304.

Type of Review: Extension without change to a currently approved collection.

Title: INTL–941–86; INTL–656–87; and INTL–704–87 (NPRM) Treatment of Shareholders of Certain Passive Foreign Investment Companies.

Abstract: The reporting requirements affect U.S. persons that are direct and

indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions and deferred tax amounts.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1545–1102.

Type of Review: Extension without change to a currently approved collection.

Title: PS–19–92 (TD 9420–Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

Abstract: This document contains final regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations to provide new options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,008 hours.

OMB Number: 1545–1615.

Type of Review: Extension without change to a currently approved collection.

Title: REG–118926–97 (T.D. 8817 Final) Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations.

Abstract: Section 6038B requires U.S. persons to provide certain information when they transfer certain property to a foreign partnership or foreign corporation. This regulation provides reporting rules to identify United States persons who contribute property to foreign partnerships and to ensure the correct reporting of items with respect to those partnerships.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1345.

Type of Review: Extension without change to a currently approved collection.

Title: CO–99–91 (Final) Limitations on Corporate Net Operating Loss.

Abstract: This regulation modifies the application of segregation rules under section 382 in the case of certain issuances of stock by a loss corporation. This regulation provides that the segregation rules do not apply to small issuances of stock, as defined, and apply only in part to certain other issuances of stock for cash.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–2179.

Type of Review: Extension without change to a currently approved collection.

Title: REG–120399–10—Patient Protection and Affordable Care Act Enrollment Opportunity Notice Relating to Lifetime Limits.

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, prohibition on discrimination in favor of highly compensated individuals, and patient protections.

Respondents: Private sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 1,300 hours.

OMB Number: 1545–1905.

Type of Review: Extension without change to a currently approved collection.

Title: REG–128767–04 (Final), (TD 9289) Treatment of Disregarded Entities Under Section 752.

Abstract: Generally, the final regulations recognize that only the assets of a disregarded entity that limits its member's liability are available to satisfy creditors' claims under local law. The proposed regulations provide rules under section 752 for taking into account the net value of a disregarded entity owned by a partner or related person for purposes of allocating, partnership liabilities.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,000 hours.

OMB Number: 1545–2178.

Type of Review: Extension without change to a currently approved collection.

Title: REG–118412–10—Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act (TD XXXX).

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding status as a grandfathered health plan.

Respondents: Private sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 323,000 hours.

Bureau Clearance Officer: Allan Hopkins, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 622–6665.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–32618 Filed 12–27–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 10 newly-designated entities and 5 newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

DATES: The designation by the Director of OFAC of the 10 entities and 5 individuals identified in this notice pursuant to Executive Order 13382 is effective on November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On November 30, 2010, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 10 entities and 5 individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

Entities:

1. ASHTEAD SHIPPING COMPANY LIMITED, Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, PO Box 19395–1311, Tehran, Iran; Business Registration Document # 108116C (Man, Isle of); E-mail Address *smd@irisl.net;* Web site *www.irisl.net;* Telephone: 982120100488; Fax: 982120100486 [NPWMD]

2. BYFLEET SHIPPING COMPANY LIMITED, Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, PO Box 19395–1311, Tehran, Iran; Business Registration Document #118117C (Man, Isle of); E-mail Address *smd@irisl.net*; Website www.irisl.net; Telephone: 982120100488; Fax: 982120100486 [NPWMD]

3. COBHAM SHIPPING COMPANY LIMITED, Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, PO Box 19395–1311, Tehran, Iran; Business Registration Document #108118C (Man, Isle of); E-mail Address smd@irisl.net; Web site *www.irisl.net*; Telephone: 982120100488; Fax: 982120100486 [NPWMD]

4. DORKING SHIPPING COMPANY LIMITED, Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, PO Box 19395–1311, Tehran, Iran; Business Registration Document #108119C (Man, Isle of); E-mail Address smd@irisl.net; Website *www.irisl.net*; Telephone: 982120100488; Fax: 982120100486 [NPWMD]

5. EFFINGHAM SHIPPING COMPANY LIMITED, Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, PO Box 19395–1311, Tehran, Iran; Business Registration Document #108120C (Man, Isle of); E-mail Address smd@irisl.net; Web site *www.irisl.net*; Telephone: 982120100488; Fax: 982120100486 [NPWMD]

6. FARNHAM SHIPPING COMPANY LIMITED, Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; c/o Islamic Republic of Iran Shipping Lines (IRISL), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, PO Box 19395–1311, Tehran, Iran; Business Registration Document #108146C (Man, Isle of); Email Address *smd@irisl.net; Website www.irisl.net;* Telephone: 982120100488; Fax: 982120100486 [NPWMD]

7. GOMSHALL SHIPPING COMPANY LIMITED, c/o Soroush Sarzamin Asatir (SSA) Ship Management Co, Shabnam Alley, Golriz St, Vafa Alley, Fajr St, Shahid Motahari Avenue, 1589675951, Tehran, Iran; Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; Business Registration Document #111998C (Man, Isle of); E-mail Address *info@ssa-smc.net;* Web site *www.ssa-smc.net;* Telephone: 982126100191; Fax: 982126100192 [NPWMD]

8. HORSHAM SHIPPING COMPANY LIMITED, c/o Soroush Sarzamin Asatir (SSA) Ship Management Co, Shabnam Alley, Golriz St, Vafa Alley, Fajr St, Shahid Motahari Avenue, 1589675951, Tehran, Iran; Manning House, 21 Bucks Road, Douglas IM1 3DA, Man, Isle of; Business Registration Document #111999C (Man, Isle of); E-mail Address *info@ssa-smc.net;* Web site *www.ssa-smc.net;* Telephone: 982126100191; Fax: 982126100192 [NPWMD]

9. PEARL ENERGY COMPANY LTD., Level 13(E) Main Office Tower, Jalan Merdeka, Financial Park Complex, Labuan, 87000, Malaysia; Telephone 6087541688; Fax: 6087453688 [NPWMD]

10. PEARL ENERGY SERVICES, SA, 15 Avenue de Montchoisi, Lausanne, 1006 VD, Switzerland; Telephone: 0216140614; Business Registration Document Number: CH–550.1.058.055–9 [NPWMD]

Individuals

1. AFZALI, ALI, c/o Bank Mellat, Tehran, Iran; DOB: 1 July 1967; Nationality: Iranian [NPWMD]

2. DAJMAR, Mohhammad Hossein (a.k.a. DAJMAR, Mohammad Hossein); DOB 19 Feb 1956; nationality Iran; Passport K13644698 (Iran) expires 16 May 2013 (individual) [NPWMD]

3. GOLPARVAR, Gholam Hossein (a.k.a. GOLPARVAR, Gholamhossein); DOB 23 Jan 1957; nationality Iran; Passport U14643027 (Iran) expires 11 Nov 2013 (individual) [NPWMD]

4. PAJAND, Mohammad Hadi, 73 Blair Court, Boundary Road, London NW8 6NT, United Kingdom; DOB 28 May 1950; nationality Iran (individual) [NPWMD]

5. ZADEH, Hassan Jalil (a.k.a. JALILZADEH, Hassan); DOB 26 Jan 1959; nationality Iran; Passport

A1508382 (Iran) expires 24 Feb 2010 (individual) [NPWMD]

Dated: December 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–32604 Filed 12–27–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Foreign Assets Control Office

Additional Designation Pursuant to Executive Order 13469 of July 25, 2008 "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13469 of July 25, 2008 "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe" (the "Order").

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to the Order is effective December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., (Treasury Annex), Washington, DC 20220, *Tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about this designation and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On July 25, 2008, the President issued Executive Order 13469 with respect to Zimbabwe pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13288 of March 7, 2003, and relied upon for additional steps taken in Executive Order 13391 of November 22, 2005, in order to address the continued political repression and the undermining of democratic processes and institutions in Zimbabwe.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(i) through (a)(viii) of Section 1.

On December 21, 2010, the Director of OFAC designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(i) through (a)(viii) of Section 1 of the Order, the following individual whose name has been added to the list of Specially Designated Nationals and Blocked Persons and whose property and interests in property are blocked, pursuant to the Order:

Individual:

• TOMANA, Johannes, Office of Attorney General, Private Bag 7714, Causeway, Harare, Zimbabwe; DOB 9 Sep 1967; National ID No. 50–036322F 50 (Zimbabwe); Attorney General (individual) [ZIMBABWE]

Dated: December 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–32609 Filed 12–27–10; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the entity identified in this notice, pursuant to Executive Order 13224, is effective on December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with

foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 21, 2010 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

1. LINER TRANSPORT KISH (a.k.a. "LTK"), Bandar Abbas Office: No. 7, 1st Floor, Dehghan Building, Shohada (Yadbood) Square, Bandar Abbas, Iran; Central Office: Office No. 141, Ground Floor, Kish City Services Building, Kish Island, Iran; Tehran Office: Add: No. 10, 3rd Floor, Unit 6, Ebrahimi Junction 8th Bostan St., Tehran, Iran; Tehran Terminal Office: No. 537, Polygam Street, Mahmoud Abad Road, Khavar Shahr, Tehran, Iran [SDGT].

Dated: December 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–32620 Filed 12–27–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Foreign Assets Control Office

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 13288, as Amended by Executive Order 13391

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of ten individuals whose property and interests in property have been unblocked pursuant to Executive Order 13288 of March 6, 2003, "Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe," as amended by Executive Order 13391 of November 22, 2005, "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe."

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the ten individuals identified in this notice whose property and interests in property were blocked pursuant to Executive 13288 of March 6, 2003, as amended by Executive Order 13391 of November 22, 2005, is effective on December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service *tel.:* (202) 622–0077.

Background

On March 6, 2003, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06) ("IEEPA") issued Executive Order 13288 (68 FR 11457, March 10, 2003). In Executive Order 13288, the President declared a national emergency to deal with the threat posed by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions, contributing to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region. The Annex to Executive Order 13288 included 77 individuals, including nine of the ten individuals identified in this notice, which resulted in the blocking of all property and interests in property of these individuals that was or thereafter came within the United States or the possession or control of U.S. persons. Executive Order 13288 also authorized the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons determined to meet the criteria set forth in Executive Order 13288.

On November 22, 2005, in order to take additional steps with respect to the continued actions and policies of certain persons who undermine Zimbabwe's democratic processes and with respect to the national emergency described and declared in Executive Order 13288, the President, invoking the authority of, *inter alia,* IEEPA, issued Executive Order 13391 (70 FR 71201, November 25, 2005). Executive Order 13391 amends Executive Order 13288 and provides that the Annex to Executive Order 13288 is replaced and superseded in its entirety by the Annex to Executive Order 13391, containing the names of 128 individuals and 33 entities, including the ten individuals identified in this notice. Executive Order 13288, as amended by Executive Order 13391, authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to block the property and interests in property of additional categories of persons beyond the category set forth in Executive Order 13288 prior to its amendment.

Executive Order 13288, as amended by Executive Order 13991, also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to determine that circumstances no longer warrant the inclusion of a person in the Annex to Executive Order 13288, as replaced and superseded by the Annex to Executive Order 13991, and to unblock any property and interests in property that had been blocked as a result of the person's inclusion in the Annex.

On December 21, 2010, the Director of OFAC, in consultation with the State Department, determined that circumstances no longer warrant the inclusion of the individuals listed below in the Annex to Executive Order 13288, as replaced and superseded by the Annex to Executive Order 13391, and that the property and interests in property of the individuals listed below are therefore no longer blocked pursuant to section 1(a) of Executive Order 13288, as amended by Executive Order 13391, and accordingly removed them from the SDN List.

- CHIKOWORE, Enos; DOB 17 July 1942; Former Central Committee Member; Deceased (individual) [ZIMBABWE].
- HOVE, Richard Chemist; DOB 23 Sep 1939; Passport ZD002376 (Zimbabwe); Politburo Secretary for Economic Affairs (individual) [ZIMBABWE].
- JOKONYA, Tichaona Joseph Benjamin, Samaita Mutasa Farm, Beatrice, Zimbabwe; DOB 27 Dec 1938;

Passport ZD002261 (Zimbabwe); alt. Passport D001289 (Zimbabwe); alt. Passport AD000797 (Zimbabwe); Minister of Information and Publicity (individual) [ZIMBABWE].

• MANGWENDE, Witness; DOB 15 Aug 1946; Former Minister of Transport and Communications; Deceased (individual) [ZIMBABWE].

• MOMBESHORA, Swithun; DOB 20 Aug 1945; Former Minister of Higher Education; Deceased (individual) [ZIMBABWE].

• MSIKA, Joseph; DOB 6 Dec 1923; Passport ZD001610 (Zimbabwe); First Vice President (individual) [ZIMBABWE].

• MUZENDA, Simon Vengesai; DOB 28 Oct 1922; Former Vice President; Deceased (individual) [ZIMBABWE].

• NKOMO, Stephen; DOB 3 Oct 1926; Former Politburo Senior Committee Member; Deceased (individual) [ZIMBABWE].

• RUSERE, Tinos, 12 Cooke Avenue, Southerton, Harare, Zimbabwe; DOB 10 May 1945; Deputy Minister of Mines and Mining Development (individual) [ZIMBABWE].

• TUNGAMIRAI, Josiah; DOB 8 Oct 1948; Former Minister of State for Indigenization and Empowerment; Deceased (individual) [ZIMBABWE].

Dated: December 21, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–32605 Filed 12–27–10; 8:45 am]

BILLING CODE 4811–45–P

Federal Register

Tuesday,

December 28, 2010

Part II

Federal Reserve System

12 CFR Part 235

Debit Card Interchange Fees and Routing; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 235

[Regulation II; Docket No. R–1404]

RIN 7100–AD63

Debit Card Interchange Fees and Routing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is requesting public comment on proposed new Regulation II, Debit Card Interchange Fees and Routing, which: establishes standards for determining whether an interchange fee received or charged by an issuer with respect to an electronic debit transaction is reasonable and proportional to the cost incurred by the issuer with respect to the transaction; and prohibits issuers and networks from restricting the number of networks over which an electronic debit transaction may be processed and from inhibiting the ability of a merchant to direct the routing of an electronic debit transaction to any network that may process such transactions. With respect to the interchange fee standards, the Board is requesting comment on two alternatives that would apply to covered issuers: an issuer-specific standard with a safe harbor and a cap; or a cap applicable to all such issuers. The proposed rule would additionally prohibit circumvention or evasion of the interchange fee limitations (under both alternatives) by preventing the issuer from receiving net compensation from the network (excluding interchange fees passed through the network). The Board also is requesting comment on possible frameworks for an adjustment to interchange fees for fraud-prevention costs. With respect to the debit-card routing rules, the Board is requesting comment on two alternative rules prohibiting network exclusivity: one alternative would require at least two unaffiliated networks per debit card, and the other would require at least two unaffiliated networks for each type of transaction authorization method. Under both alternatives, the issuers and networks would be prohibited from inhibiting a merchant's ability to direct the routing of an electronic debit transaction over any network that may process such transactions.

DATES: Comments must be submitted by February 22, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1404 and RIN No. 7100 AD63, by any of the following methods:

Agency Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

Fax: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Dena Milligan, Attorney (202/452–3900), Legal Division, David Mills, Manager and Economist (202/530–6265), Division of Reserve Bank Operations & Payment Systems, Mark Manuszak, Senior Economist (202/721–4509), Division of Research & Statistics, or Ky Tran-Trong, Counsel (202/452–3667), Division of Consumer & Community Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION

Background

I. Section 1075 of the Dodd-Frank Act—Overview

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") (Pub. L. 111–203, 124 Stat. 1376 (2010)) was enacted on July 21, 2010. Section 1075 of the Dodd-Frank Act amends the Electronic Fund Transfer Act ("EFTA") (15 U.S.C. 1693 *et seq.*) by adding a new section 920 regarding interchange transaction fees and rules for payment card transactions.[1]

EFTA Section 920 provides that, effective July 21, 2011, the amount of any interchange transaction fee that an issuer receives or charges with respect to an electronic debit transaction must be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.[2] That section authorizes the Board to prescribe regulations regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction and requires the Board to establish standards for assessing whether an interchange transaction fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

Under EFTA Section 920, the Board may allow for an adjustment to an interchange transaction fee to account for an issuer's costs in preventing fraud, provided the issuer complies with the standards to be established by the Board relating to fraud-prevention activities. EFTA Section 920 also authorizes the Board to prescribe regulations in order to prevent circumvention or evasion of the restrictions on interchange transaction fees, and specifically authorizes the Board to prescribe regulations regarding any network fee to ensure that such a fee is not used to directly or indirectly compensate an issuer and is not used to circumvent or evade the restrictions on interchange transaction fees.

EFTA Section 920 exempts certain issuers and cards from the restrictions on interchange transaction fees described above. The restrictions on interchange transaction fees do not apply to issuers that, together with affiliates, have assets of less than $10 billion. The restrictions also do not apply to electronic debit transactions made using two types of debit cards—debit cards provided pursuant to government-administered payment programs and reloadable, general-use prepaid cards not marketed or labeled as a gift card or certificate. EFTA Section 920 provides, however, that beginning July 21, 2012, the exemptions from the interchange transaction fee restrictions will not apply for transactions made using debit cards provided pursuant to a government-administered payment program or made using certain reloadable, general-use prepaid cards if the cardholder may be charged either an overdraft fee or a fee for the first

[1] Section 920 is codified in 15 U.S.C. 1693o–2. As discussed in more detail below, interchange transaction fees (or "interchange fees") are fees established by a payment card network, charged to the merchant acquirer and received by the card issuer for its role in transaction.

[2] Electronic debit transaction (or "debit card transaction") means the use of a debit card, including a general-use prepaid card, by a person as a form of payment in the United States.

withdrawal each month from ATMs in the issuer's designated ATM network.

In addition to rules regarding restrictions on interchange transaction fees, EFTA Section 920 also requires the Board to prescribe certain rules related to the routing of debit card transactions. First, EFTA Section 920 requires the Board to prescribe rules that prohibit issuers and payment card networks ("networks") from restricting the number of networks on which an electronic debit transaction may be processed to one such network or two or more affiliated networks. Second, that section requires the Board to prescribe rules prohibiting issuers and networks from inhibiting the ability of any person that accepts debit cards from directing the routing of electronic debit transactions over any network that may process such transactions.

EFTA Section 920 requires the Board to establish interchange fee standards and rules prohibiting circumvention or evasion no later than April 21, 2011. These interchange transaction fee rules will become effective on July 21, 2011. EFTA Section 920 requires the Board to issue rules that prohibit network exclusivity arrangements and debit card transaction routing restrictions no later than July 21, 2011, but does not establish an effective date for these rules.

II. Overview of the Debit Card Industry

Over the past several decades, there have been significant changes in the way consumers make payments in the United States. The use of checks has been declining since the mid-1990s as checks (and most likely some cash payments) are being replaced by electronic payments (*e.g.,* debit card payments, credit card payments, and automated clearing house (ACH) payments). Debit card usage, in particular, has increased markedly during that same period. After a long period of slow growth during the 1980s and early 1990s, debit card transaction volume began to grow very rapidly in the mid-1990s. Debit card payments have grown more than any other form of electronic payment over the past decade, increasing to 37.9 billion transactions in 2009. Debit cards are accepted at about 8 million merchant locations in the United States. In 2009, debit card transactions represented almost half of total third-party debits to deposit accounts, while approximately 30 percent of total third-party debits to deposit accounts were made by checks.[3]

In general, there are two types of debit card transactions: PIN (personal identification number)-based and signature-based.[4] The infrastructure for PIN debit networks differs from that for signature debit networks. PIN debit networks, which evolved from the ATM networks, are single-message systems in which authorization and clearing information is carried in one single message. Signature debit networks, which leverage the credit card network infrastructure, are dual-message systems, in which authorization information is carried in one message and clearing information is carried in a separate message. In the current environment, certain transactions cannot readily be accommodated on PIN-based, single-message systems, such as transactions for hotel stays or car rentals, where the exact amount of the transaction is not known at the time of authorization. In addition, PIN debit transactions generally are not accepted for Internet transactions. Overall, roughly one-quarter of the merchant locations in the United States that accept debit cards have the capability to accept PIN-based debit transactions. According to the Board's survey of covered card issuers, roughly 70 percent of debit cards outstanding (including prepaid cards) support both PIN- and signature-based transactions (87 percent, excluding prepaid cards).[5]

Networks that process debit card transactions exhibit two main organizational forms, often referred to as three-party and four-party systems.[6] The so-called four-party system is the model used for most debit card transactions; the four parties are the cardholder, the entity that issued the payment card to the cardholder (the issuer), the merchant, and the merchant's bank (the acquirer or merchant acquirer).[7] The network coordinates the transmission of information between the issuing and acquiring sides of the market (authorization and clearing) and the interbank monetary transfers (settlement).[8]

In a typical three-party system, the network itself acts as both issuer and acquirer. Thus, the three parties involved in a transaction are the cardholder, the merchant, and the network. Three-party systems are also referred to as "closed," because the issuer and acquirer are generally the same institution—they have, thus, tended to be closed to outside participants. The three-party model is used for some prepaid card transactions, but not for other debit card transactions.

In a typical four-party system transaction, the cardholder initiates a purchase by providing his or her card or card information to a merchant. In the case of PIN debit, the cardholder also enters a PIN. An electronic authorization request for a specific dollar amount and the cardholder's account information is sent from the merchant to the acquirer to the network, which forwards the request to the card-issuing institution.[9] The issuer verifies, among other things, that the cardholder's account has sufficient funds to cover the transaction amount and that the card was not reported as lost or stolen. A message authorizing (or declining) the transaction is returned to the merchant via the reverse path.

The clearing of a debit card transaction is effected through the authorization message (for PIN debit systems) or a subsequent message (for signature debit systems). The issuer posts the debits to the cardholders' accounts based on these clearing messages. The network calculates and communicates to each issuer and acquirer its net debit or credit position to settle the day's transactions. The interbank settlement generally is effected through a settlement account at a commercial bank, or through automated clearinghouse (ACH) transfers. The acquirer credits the merchant for the value of its transactions, less the merchant discount, as discussed below.

There are various fees associated with debit card transactions. The interchange fee is set by the relevant network and paid by the merchant acquirer to the issuer. Switch fees are charged by the network to acquirers and issuers to compensate the network for its role in

[3] Third-party debits are those debits initiated to pay parties other than the cardholder. These third-party debit numbers are derived from the 2010 Federal Reserve Payments Study. The Study reported that a total of 108.9 billion noncash payments were made in 2009, 35 percent of which were debit card payments. For purposes of determining the proportion of noncash payments that were third-party debits to accounts, ATM cash withdrawals and prepaid card transactions are excluded from the calculation. A summary of the 2010 Federal Reserve Payments Study is available at *http://www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf.*

[4] Increasingly, however, cardholders authorize "signature" debit transactions without a signature and, sometimes, may authorize a "PIN" debit transaction without a PIN. PIN-based and signature-based debit also may be referred to as "PIN debit" and "signature debit."

[5] "Covered issuers" are those issuers that, together with affiliates, have assets of $10 billion or more.

[6] Industry participants sometimes refer to four-party systems as "open loop" systems and three-party systems as "closed loop" systems.

[7] Throughout this proposed rule, the term "bank" often is used to refer to depository institutions.

[8] The term "four-party system" is something of a misnomer because the network is, in fact, a fifth party involved in a transaction.

[9] Specialized payment processors may carry out some functions between the merchant and the network or between the network and the issuer.

processing the transaction.[10] The merchant acquirer charges the merchant a merchant discount—the difference between the face value of a transaction and the amount the merchant acquirer transfers to the merchant–that includes the interchange fee, network switch fees charged to the acquirer, other acquirer costs, and an acquirer markup. The interchange fee typically comprises a large fraction of the merchant discount for a card transaction.

When PIN debit networks were first introduced, some of them structured interchange fees in a manner similar to ATM interchange fees.[11] For ATM card transactions, the cardholder's bank generally pays the ATM operator an interchange fee to compensate the ATM operator for the costs of deploying and maintaining the ATM and providing the service. Similarly, some PIN debit networks initially structured interchange fees to flow from the cardholder's bank to the merchant's bank to compensate merchants for the costs of installing PIN terminals and making necessary system changes to accept PIN debit at the point of sale. In the mid-1990s, these PIN debit networks began to shift the direction in which PIN debit interchange fees flowed. By the end of the decade, all PIN debit interchange fees were paid by acquirers to card issuers.[12]

During the 1990s, most PIN debit networks employed fixed per-transaction interchange fees. Beginning around 2000, many PIN debit networks incorporated an *ad valorem* (*i.e.,* percentage of the value of a transaction) component to their interchange fees, with a cap on the total amount of the fee for each transaction. In addition, PIN debit networks expanded the number of interchange fee categories in their fee schedules. For example, many networks created categories based on type of merchant (*e.g.,* supermarkets) and began to segregate merchants into different categories based on transaction volume (*e.g.,* transaction tiers). Over the course of the 2000s, most PIN debit networks raised the levels of fixed component fees, *ad valorem* fees, and caps on these fees. By 2010, some networks had removed per-transaction caps on many interchange fees.

In general, interchange fees for signature debit networks, like those of credit card networks, combine an *ad valorem* component with a fixed fee component. Unlike some PIN debit networks, the interchange fees for signature debit networks generally do not include a per transaction cap. Beginning in the early 1990s, signature debit networks also began creating separate categories for merchants in certain market segments (*e.g.,* supermarkets and card-not-present transactions)[13] to gain increased acceptance in those markets. Until 2003, signature debit interchange fees were generally around the same level as credit card interchange fees and have generally been significantly higher than those for PIN debit card transactions. PIN debit fees began to increase in the early 2000s, while signature debit fees declined in late 2003 and early 2004.[14] More recently, both PIN and signature debit fees have increased, although PIN debit fees have increased at a faster pace.

In addition to setting the structure and level of interchange fees and other fees to support network operations, each card network specifies operating rules that govern the relationships between network participants. Although the network rules explicitly govern the issuers and acquirers, merchants and processors also may be required to comply with the network rules or risk losing access to that network. Network operating rules cover a broad range of activities, including merchant card acceptance practices, technological specifications for cards and terminals, risk management, and determination of transaction routing when multiple networks are available for a given transaction.

III. Outreach and Information Collection

A. Summary of Outreach

Since enactment of the Dodd-Frank Act, Board staff has held numerous meetings with debit card issuers, payment card networks, merchant acquirers, merchants, industry trade associations, and consumer groups. In general, those parties provided information regarding electronic debit transactions, including processing flows for electronic debit transactions, structures and levels of current interchange transaction fees and other fees charged by the networks, fraud-prevention activities performed by various parties to an electronic debit transaction, fraud losses related to electronic debit transactions, routing restrictions, card-issuing arrangements, and incentive programs for both merchants and issuers. Interested parties also provided written submissions.[15]

B. Surveys

On September 13, 2010, the Board distributed three surveys to industry participants (an issuer survey, a network survey, and a merchant acquirer survey) designed to gather information to assist the Board in developing this proposal. Industry participants, including payment card networks, trade groups and individual firms from both the banking industry and merchant community, commented on preliminary versions of the issuer and network surveys, through both written submissions and a series of drop-in calls. In response to the comments, the two surveys were modified, as appropriate, and an additional survey of merchant acquirers was developed.[16]

The card issuer survey was distributed to 131 financial organizations that, together with affiliates, have assets of $10 billion or more.[17] The Board received 89

[10] A variety of other network fees may be collected by the network from the issuer or acquirer.

[11] In the late 1970s, bank consortiums formed numerous regional electronic funds transfer ("EFT") networks to enable their customers to withdraw funds from ATMs owned by a variety of different banks. The EFT networks were first used to handle PIN debit purchases at retailers in the early 1980s. It was not until the mid-1990s, however, that PIN debit became a popular method of payment for consumers to purchase goods and services at retail stores.

[12] Debit Card Directory (1995–1999). *See also,* Fukimo Hayashi, Richard Sullivan, & Stuart E. Weiner, "A Guide to the ATM and Debit Card Industry" (Federal Reserve Bank of Kansas City 2003).

[13] Card-not-present transactions occur when the card is not physically presented to the merchant at the time of authorization. Examples include Internet, phone, and mail-order purchases.

[14] This decline followed the settlement of litigation surrounding signature debit cards. *See In re: Visa Check/MasterMoney Antitrust Litigation,* 192 F.R.D. 68 (F.D.N.Y. 2000).

[15] The meeting summaries and written submissions are available on the Regulatory Reform section of the Board's Web site, available at *http://www.federalreserve.gov/newsevents/reform_meetings.htm.*

[16] Documentation and forms for the card issuer, payment card network, and merchant acquirer surveys are respectively available at *http://www.federalreserve.gov/newsevents/files/card_issuer_survey_20100920.pdf, http://www.federalreserve.gov/newsevents/files/payment_card_network_survey_20100920.pdf,* and *http://www.federalreserve.gov/newsevents/files/merchant_acquirer_survey_20100920.pdf.*

[17] These institutions include bank and thrift holding companies with assets of at least $10 billion; independent commercial banks, thrifts, and credit unions with assets of at least $10 billion; and FDIC-insured U.S. branches and agencies of foreign banking organizations with worldwide assets of at least $10 billion. Assets were computed using the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), the Consolidated Reports of Condition and Income (Call Reports) for independent commercial banks (FFIEC 031 & 041; OMB No. 7100–0036) and for U.S. branches and agencies of foreign banks (FFIEC 002; OMB No. 7100–0032), the Thrift Financial Reports (OTS 1313; OMB No. 1550–0023) for Thrift Holding Companies and thrift institutions, and the Credit Union Reports of Condition and Income (NCUA 5300/5300S; OMB No. 3133–0004) for credit unions. The ownership

responses to the survey. An additional 13 organizations informed the Board that they do not have debit card programs. Three organizations that issued a small number of cards declined to participate in the survey. The Board did not receive any communication from the other 26 organizations. The network survey was distributed to the 14 networks believed to process debit card transactions, all of which provided responses. The merchant acquirer survey was distributed to the largest nine merchant acquirers/processors, all of whom responded to the survey.

Information Requested and Summary Results

In general, the surveys requested information on signature debit, PIN debit and prepaid card operations and, for each card type, the costs associated with those card types, interchange fees and other fees established by networks, fraud losses, fraud-prevention and data-security activities, network exclusivity arrangements and debit-card routing restrictions. The Board compiled the survey responses in a central database, and reviewed the submissions for completeness, consistency, and anomalous responses. As indicated above, the response rates for the three surveys were high; however, some respondents were not able to provide information on all data elements requested in the surveys. For example, most respondents provided cost data at an aggregate level, but some were unable to provide cost data at the level of granularity requested in the surveys. In addition, there were inconsistencies in some data that were reported within individual responses and across responses. Therefore, each of the summary statistics reported below may be based on a subset of the responses received for each of the three surveys. The reporting period for each survey was calendar year 2009, unless otherwise noted.

Card use. The networks reported that there were approximately 37.7 billion debit and prepaid card transactions in 2009, valued at over $1.45 trillion, with an average value of $38.58 per transaction.[18] [19] [20] Responding issuers reported that, on average, they had 174 million debit cards and 46 million prepaid cards outstanding during 2009. Eighty-seven percent of debit cards and 25 percent of prepaid cards were enabled for use on both signature and PIN networks. Four percent of debit cards and 74 percent of prepaid cards were enabled for use on signature networks only. Finally, 9 percent of debit cards and 1 percent of prepaid cards were enabled for use on PIN networks only. Responding acquirers reported that 6.7 million merchant locations were able to accept signature debit cards and 1.5 million were able to accept PIN debit cards.[21]

Interchange fees. Networks reported that debit and prepaid interchange fees totaled $16.2 billion in 2009.[22] The average interchange fee for all debit transactions was 44 cents per transaction, or 1.14 percent of the transaction amount. The average interchange fee for a signature debit transaction was 56 cents, or 1.53 percent of the transaction amount. The average interchange fee for a PIN debit transaction was significantly lower than that of a signature debit transaction, at 23 cents per transaction, or 0.56 percent of the transaction amount. Prepaid card interchange fees were similar to those of signature debit, averaging 50 cents per transaction, or 1.53 percent of the transaction amount.[23]

Processing costs. Issuers reported their per-transaction processing costs, which are those costs related to authorization, clearance, and settlement of a transaction.[24] The median per-transaction total processing cost for all types of debit and prepaid card transactions was 11.9 cents.[25] The median per-transaction variable processing cost was 7.1 cents for all types of debit and prepaid card transactions.[26] The median per-transaction network processing fees were 4.0 cents for all types of debit and prepaid card transactions.[27]

Network fees. Networks reported charging two types of per-transaction fees: processing and non-processing fees. Networks also reported charging fees other than on a per-transaction basis. Networks charged issuers a total of $2.3 billion in fees and charged acquirers a total of $1.9 billion in fees. In general, the proportion of fees paid by each party varied by network type. Aggregating these fees across all debit and prepaid card transactions, the average network fee attributable to each transaction was 6.5 cents for issuers and 5.0 cents for acquirers. The average network fee attributable to each signature debit transaction was 8.4 cents for issuers and 5.7 cents for acquirers. Thus, about 60 percent of signature debit network fees were paid by issuers and 40 percent by acquirers. For PIN debit transactions, the average network fee attributable to each transaction was 2.7 cents for issuers and 3.7 cents for acquirers. Thus, about 42 percent of PIN debit network fees were paid by issuers and 58 percent by acquirers. As noted above, these fees include per-transaction processing fees and non-processing fees, as well as other fees. Based on data reported by responding issuers, signature debit network processing fees were 3.0 cents per transaction on average and PIN debit network processing fees were 1.6¢ per transaction on average.

Networks also reported providing discounts and incentives to issuers and acquirers/merchants. Issuers were provided discounts and incentives totaling $0.7 billion, or an average of 2.0 cents per transaction, while acquirers

structure of banking organizations was established using the FFIEC's National Information Center structure database.

[18] These data do not include ATM transactions. Responding issuers accounted for approximately 60 percent of total debit and prepaid card transactions in 2009. The acquirers surveyed handled about 95 percent of these total transactions.

[19] Of these 37.7 billion transactions, 22.5 billion were signature debit transactions, with a total value of $837 billion and an average value of $37.15 per transaction; 14.1 billion were PIN debit transactions with a total value of $584 billion and an average value of $41.34 per transaction; and 1.0 billion were prepaid card transactions, with a total value of $33 billion and an average value of $32.54 per transactions. Of the 37.7 billion transactions, 90 percent were card-present transactions. Eighty-six percent of signature debit and 97 percent of PIN debit transactions were card-present transactions.

[20] The recently released 2010 Federal Reserve Payments Study reported 6.0 billion prepaid card transactions in 2009, of which 1.3 billion were general purpose prepaid card transactions and 4.7 billion were private label prepaid card and electronic benefit transfer card transactions that were not included in the Board survey.

[21] These numbers differ from the estimates that were otherwise provided to the Board by major payment card networks, card issuers, and merchant acquirers.

[22] Of the $16.2 billion in interchange-fee revenue, $12.5 billion was for signature debit transactions, $3.2 billion was for PIN debit transactions and $0.5 billion was for prepaid card transactions. The responding issuers reported receiving $11.0 billion, or about 68 percent of total interchange fees.

[23] The network survey also requested information on historical interchange fees. Not all networks reported historical interchange fees back to 1990. However, from 1990 to 2009, it appears that interchange fees for signature debit transactions generally were around 1.5 percent of transaction value. Based on other industry resources, interchange fees on PIN debit transactions in the late 1990s were about 7 cents per transaction (Debit Card Directory, 1995–1999). Therefore, it appears that these fees rose significantly during the 2000s.

[24] Unlike other statistics in this discussion, the Board discusses cost information using percentiles within this **Federal Register** Notice to avoid having summary measures distorted by extreme values in the sample cost data.

[25] By transaction type, the median total per-transaction processing cost was 13.7 cents for signature debit, 7.9 cents for PIN debit and 63.6 cents for prepaid cards.

[26] By transaction type, the median variable per-transaction processing cost was 6.7 cents for signature debit, 4.5 cents for PIN debit, and 25.8 cents for prepaid cards.

[27] By transaction type, the median per-transaction network processing fees were 4.7 cents for signature debit, 2.1 cents for PIN debit, and 6.9 cents for prepaid cards.

were provided discounts and incentives of $0.3 billion, or an average of 0.9 cents per transaction. Signature debit networks provided average incentives and discounts of 2.6 cents per transaction to issuers and 1.2 cents per transaction to acquirers. Thus, 69 percent of signature debit network incentives and discounts were provided to issuers and 31 percent to acquirers. PIN debit networks provided average incentives and discounts of 0.7 cents per transaction to issuers and 0.5 cents per transaction to acquirers. Thus, 61 percent of PIN debit network incentives and discounts were provided to issuers and 39 percent to acquirers.

Discounts and incentives effectively reduce the per-transaction amount of network fees each party pays. After adjusting for discounts and incentives, the average net network fee per transaction is 4.5 cents for issuers and 4.1 cents for acquirers.[28] For signature debit transactions, the average net network fee per transaction is 5.9 cents for issuers and 4.5 cents for acquirers. Thus, 57 percent of net network fees on signature networks were paid by issuers and 43 percent by acquirers. For PIN debit networks, the average net network fee per transaction is 1.9 cents for issuers and 3.2 cents for acquirers. Thus, 37 percent of net network fees on PIN debit networks were paid by issuers and 63 percent by acquirers.

Fraud data. Survey responses on fraud occurrence, fraud losses, and fraud-prevention and data-security costs are discussed in section IV of this notice.

Exclusivity arrangements and routing restrictions. The surveys also included a number of questions about exclusivity arrangements and transaction routing procedures. Respondents reported that there are arrangements, either rules-based or contractual, under which transactions must be routed exclusively over specific networks or that commit issuers to meet certain volume and dollar thresholds for transactions on those networks. Respondents also reported that they receive incentives under these arrangements, which for issuers take the form lower network fees, signing bonuses, and marketing and development funds. For acquirers, the incentives typically take the form of lower network fees.

Summary of Proposal

Reasonable and proportional fees. The Board is requesting comment on two alternative standards for determining whether the amount of an interchange transaction fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Alternative 1 adopts issuer-specific standards with a safe harbor and a cap. In contrast, Alternative 2 adopts a cap that is applicable to all covered issuers.

Under Alternative 1, an issuer could comply with the standard for interchange fees by calculating its allowable costs and ensuring that, unless it accepts the safe harbor as described below, it did not receive any interchange fee in excess of its allowable costs through any network. An issuer's allowable costs would be those costs that are attributable to the issuer's role in authorization, clearance, and settlement of the transaction and that vary with the number of transactions sent to an issuer within a calendar year (variable costs). The issuer's allowable costs incurred with respect to each transaction would be the sum of the allowable costs of all electronic debit transactions over a calendar year divided by the number of electronic debit transactions on which the issuer received or charged an interchange transaction fee in that year. The issuer-specific determination in Alternative 1 would be subject to a cap on the amount of any interchange fee an issuer could receive or charge, regardless of the issuer's allowable cost calculation. The Board proposes to set this cap at an initial level of 12 cents per transaction. Alternative 1 also would permit an issuer to comply with the regulatory standard for interchange fees by receiving or charging interchange fees that do not exceed the safe harbor amount, in which case the issuer would not need to determine its maximum interchange fee based on allowable costs. The Board proposes to set the safe harbor amount at an initial level of 7 cents per transaction. Therefore, under Alternative 1, each payment card network would have the option of setting interchange fees either (1) at or below the safe harbor or (2) at an amount for each issuer such that the interchange fee for that issuer does not exceed the issuer's allowable costs, up to the cap.

Under Alternative 2, an issuer would comply with the standard for interchange fees as long as it does not receive or charge a fee above the cap, which would be set at an initial level of 12 cents per transaction. Each payment card network would have to set interchange fees such that issuers do not receive or charge any interchange fee in excess of the cap.

Fraud-prevention adjustment. The Board's proposal requests comment on two general approaches to the fraud-prevention adjustment framework and asks several questions related to the two alternatives. One approach focuses on implementation of major innovations that would likely result in substantial reductions in total, industry-wide fraud losses. The second approach focuses on reasonably necessary steps for an issuer to maintain an effective fraud-prevention program, but would not prescribe specific technologies that must be employed as part of the program. At this time, the Board is not proposing a specific adjustment to the amount of an interchange fee for an issuer's fraud-prevention costs. After considering the comments received, the Board expects to develop a specific proposal on the fraud adjustment for public comment.

Exemptions. The Board's proposed rule exempts issuers that, together with affiliates, have assets of less than $10 billion. The Board's proposed rule also exempts electronic debit transactions made using debit cards issued under government-administered programs or made using certain reloadable prepaid cards. These exempt issuers or transactions would not be subject to the interchange transaction fee restrictions. The exemptions do not apply to the proposed rule's provisions regarding network exclusivity and routing restrictions.

Prohibition on circumvention or evasion. In order to prevent circumvention or evasion of the limits on the amount of interchange fees that issuers receive from acquirers, the proposed rule would prohibit an issuer from receiving net compensation from a network for debit card transactions, excluding interchange transaction fees. For example, the total amount of compensation provided by the network to the issuer, such as per-transaction rebates, incentives or payments, could not exceed the total amount of fees paid by the issuer to the network.

Limitation on debit card restrictions. The Board is requesting comment on two alternative approaches to implement the statute's required rules that prohibit network exclusivity. Under Alternative A, an issuer or payment card network may not restrict the number of payment card networks over which an electronic debit transaction may be carried to fewer than two unaffiliated networks. Under this alternative, it would be sufficient for an issuer to issue a debit card that can be processed over one signature-based network and one PIN-based network, provided the networks are not affiliated. Under

[28] Net network fees paid by issuers and acquirers were calculated by subtracting incentives and discounts provided from network fees paid.

Alternative B, an issuer or payment card network may not restrict the number of payment card networks over which an electronic debit transaction may be carried to less than two unaffiliated networks for each method of authorization the cardholder may select. Under this alternative, an issuer that used both signature- and PIN-based authorization would have to enable its debit cards with two unaffiliated signature-based networks and two unaffiliated PIN-based networks.

Transaction routing. The Board proposes to prohibit issuers and payment card networks from restricting the ability of a merchant to direct the routing of electronic debit transactions over any of the networks that an issuer has enabled to process the electronic debit transactions. For example, issuers and payment card networks may not set routing priorities that override a merchant's routing choice. The merchant's choice, however, would be limited to those networks enabled on a debit card.

Scope of Rule

In general, the Board's proposed rule covers debit card transactions (not otherwise exempt) that debit an account. The Board's proposed rule also covers both three-party and four-party systems. Throughout the proposal, the Board generally describes the interchange fee standards and the network exclusivity and routing rules in a manner that most readily applies to debit card transactions initiated at the point of sale for the purchase of goods and services and debit card transactions carried over four-party networks. The scope of the proposed rule, however, covers three-party networks and could cover ATM transactions and networks. The Board requests comment on the application of the proposed rule to ATM transactions and ATM networks, as well as to three-party networks.

Coverage of ATM transactions and networks. The Board requests comment on whether ATM transactions and ATM networks should be included within the scope of the rule. Although the statute does not expressly include ATM transactions within its scope, EFTA Section 920's definitions of "debit card," "electronic debit transaction," and "payment card network" could be read to bring ATM transactions within the coverage of the rule. Specifically, most ATM cards can be used to debit an asset account. It could also be argued that an ATM operator accepts the debit card as form of payment to carry out the transaction, so the ATM network could be covered by the statutory definition of a "payment card network."

Under EFTA Section 920(c)(8), the term "interchange transaction fee" is defined as a fee charged "for the purpose of compensating an issuer." Traditionally, however, the interchange fee for ATM transactions is paid by the issuer and flows to the ATM operator. Thus, the proposed interchange transaction fee standards would not apply to ATM interchange fees and would not constrain the current level of such fees.[29]

The network-exclusivity prohibition and routing provisions, however, would directly affect the operations of ATM networks if these provisions were applied to such networks. Issuers would be required to offer ATM cards that can be accepted on at least two unaffiliated networks, and the ATM operator would have the ability to choose the network through which transactions would be routed. As discussed below, in point-of-sale transactions, these provisions improve the ability of a merchant to select the network that *minimizes* its cost (particularly the cost associated with interchange fees) and otherwise provides the most advantageous terms. In the case of ATM transactions, however, the exclusivity and routing provisions would give the ATM operator, which is receiving the ATM interchange fee, the ability to select the network that *maximizes* that fee. Therefore, coverage of ATM networks under the rule may result in very different economic incentives than coverage of point-of-sale debit card networks.

If ATM networks and ATM transactions are included within the scope of the rule, the Board requests comment on how to implement the network exclusivity provision. For example, if the Board requires two unaffiliated networks for each authorization method, should it explicitly require an issuer to ensure that ATM transactions may be routed over at least two unaffiliated networks? Should the Board state that one point-of-sale debit network and one ATM-only network would not satisfy the exclusivity prohibition under either proposed alternative? The Board also specifically requests comment on the effect of treating ATM transactions as "electronic debit transactions" under the rule on small issuers, as well as the cardholder benefit, if any, of such an approach.

Coverage of three-party systems. The Board also requests comment on the appropriate application of the interchange fee standards to electronic debit transactions carried over three-party systems. In a three-party payment system, the payment card network typically serves both as the card issuer and the merchant acquirer for purposes of accepting payment on the network.[30] In this system, there is no explicit interchange fee. Instead, the merchant directly pays a merchant discount to the network. The merchant discount typically is equivalent to the sum of the interchange fee, the network switch fee, other acquirer costs, and an acquirer markup that would typically be imposed in a four-party system.

Both the statutory and proposed definition of "interchange transaction fee" would cover the part of the merchant discount in a three-party system that is used to compensate the network for its role as issuer. If a three-party network apportioned its entire merchant discount to its roles as network or merchant acquirer, however, the interchange fee would, in effect, be zero. This outcome, coupled with the fact the statute does not restrict fees an acquirer charges a merchant, may present practical difficulties in limiting the amount of a merchant discount charged in a three-party network. The Board requests comment on the appropriate way to treat three-party networks and on any specific clarifications with respect to such fees that should be provided in the regulation.

In addition, the Board requests comment on how the network exclusivity and routing provisions should be applied to three-party systems. If the limitations on payment card network restrictions under § 235.7 were applied to a three-party system, debit cards issued by the network would be required to be capable of being routed through at least one unaffiliated payment card network in addition to the network issuing the card, and the network may not inhibit a merchant's ability to route a transaction to any other unaffiliated network(s) enabled on a debit card. For example, under Alternative A for the network exclusivity provisions, the payment card network would be required to add an unaffiliated network and arrange for the unaffiliated debit network to carry debit transactions, for ultimate routing

[29] The rule's interchange fee standard could become a constraint in the future if ATM interchange fees begin to flow in the same direction as point-of-sale debit card transactions, as was the case for interchange fees of certain PIN debit networks in the 1990s.

[30] In addition, under a three-party system, outside processors generally are not authorized by the network to acquire transactions from merchants. Although outside processors may provide some processing services to the merchant, the network is ultimately the acquirer for every transaction.

to the contracting network, which may result in more circuitous routing that would otherwise be the case. Under Alternative B, which requires at least two unaffiliated payment card networks for each method of authorization, the payment card network would be required to add at least one unaffiliated signature debit network for a signature-only debit card. In addition, if the debit card had PIN debit functionality, the card would also have to be accepted on at least two unaffiliated PIN debit networks.

The Board recognizes that the nature of a three-party system could be significantly altered by any requirement to add one or more unaffiliated payment card networks capable of carrying electronic debit transactions involving the network's cards. Nonetheless, the statute does not provide any apparent basis for excluding three-party systems from the scope of the provisions of EFTA Section 920(b). The Board requests comment on all aspects of applying the proposed rule to three-party payment systems, including on any available alternatives that could minimize the burden of compliance on such systems.

Section-by-Section Analysis

I. Sec. 235.1 Authority and purpose

This section sets forth the authority and purpose for the proposed rule.

II. Sec. 235.2 Definitions

The proposed rule provides definitions for many of the terms used in the rule. As noted throughout this section, many of the definitions follow the EFTA's definitions. The proposed rule also provides definitions for terms not defined in EFTA Section 920. Some of these definitions are based on existing statutory or regulatory definitions, while others are based on terminology in the debit card industry. The Board requests comment on all of the terms and definitions set out in this section. In particular, the Board requests comment on any terms used in the proposed rule that a commenter believes are not sufficiently clear or defined.

A. Sec. 235.2(a) Account

EFTA Section 920(c) defines the term "debit card" in reference to a card, or other payment code or device, that is used "to debit an asset account (regardless of the purpose for which the account is established) * * *." That section, however, does not define the terms "asset account" or "account." EFTA Section 903(2) defines the term "account" to mean "a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of [the EFTA]), as described in regulations of the Board established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a *bona fide* trust agreement." [31]

Similar to EFTA Section 903(2), proposed § 235.2(a) defines "account" to include a transaction account (which includes a demand deposit), savings, or other asset account. The proposed definition, however, differs from EFTA Section 903(2) because EFTA Section 920(c) does not restrict the term debit card to those cards, or other payment codes or devices, that debit accounts established for a particular purpose. Accordingly, the proposed definition includes both an account established primarily for personal, family, or household purposes and an account established for business purposes. For the same reason, the proposed definition of "account" includes an account held by a financial institution under a *bona fide* trust arrangement. These distinctions from the EFTA Section 903(2)'s definition are clarified in proposed comment 2(a)–1.

The proposed definition of "account" is limited to accounts that are located in the United States. The Board does not believe it is appropriate to apply EFTA Section 920's limitations to foreign issuers or accounts, absent a clear indication from Congress to do so.

B. Sec. 235.2(b) Acquirer

Proposed § 235.2(b) defines the term "acquirer." Within the debit card industry, there are numerous models for acquiring transactions from merchants, and the term "acquirer" may not always be used to refer to the entity that holds a merchant's account. In some acquiring relationships, an institution performs all the functions of the acquirer (*e.g.,* signing up and underwriting merchants, processing payments, receiving and providing settlement for the merchants' transactions, and other account maintenance). In other acquiring relationships, an institution performs all the functions of the acquirer except for settling the merchant's transactions with both the merchant and the network.

The Board is proposing to limit the term "acquirer" to entities that "acquire" (or buy) the electronic debit transactions from the merchant. Proposed § 235.2(b) defines "acquirer" as a person that "contracts directly or indirectly with a merchant to receive and provide settlement for the merchant's electronic debit transactions over a payment card network." Proposed § 235.2(b) limits the term to those entities serving a financial institution function with respect to the merchant, as distinguished from a processor function, by stipulating that the entity "receive and provide settlement for the merchant's" transactions. Proposed § 235.2(b) also explicitly excludes entities that solely process transactions for the merchant from the term "acquirer."

Proposed § 235.2(b), however, takes into consideration the fact that the degree of involvement of the entity settling with the merchant varies under different models by defining "acquirer" as a person that "contracts directly or indirectly with a merchant." *See* proposed comment 2(b)–1.

C. Sec. 235.2(c) Affiliate and § 235.2(e) Control

Proposed §§ 235.2(c) and (e) define the terms "affiliate" and "control." EFTA Section 920(c)(1) defines the term "affiliate" as "any company that controls, is controlled by, or is under common control with another company." The proposed rule incorporates the EFTA's definition of "affiliate."

Although the EFTA's definition of affiliate is premised on control, the EFTA does not define that term. The Board is proposing to adopt a definition of "control" that is consistent with definitions of that term in other Board regulations.[32]

D. Sec. 235.2(d) Cardholder

Proposed § 235.2(d) defines the term "cardholder" as the person to whom a debit card is issued. Proposed comment 2(d) clarifies that if an issuer issues a debit card for use to debit a transaction, savings, or other similar asset account, the cardholder usually will be the account holder. In some cases, however, such as with a business account, there may be multiple persons who have been issued debit cards and are authorized to use those debit cards to debit the same account. Each employee issued a card would be considered a cardholder. In the case of a prepaid card, the cardholder is the person that purchased the card or a person who received the card from the purchaser. *See* proposed comment 2(d)–1.

[31] 15 U.S.C. 1693a.

[32] *See* Regulation Y (Bank Holding Companies and Change in Bank Control), 12 CFR 225.2(e)) and Regulation P (Privacy of Consumer Financial Information), 12 CFR 216.3(g).

F. Sec. 235.2(f) Debit Card and § 235.2(i) General-Use Prepaid Card

Debit Card (§ 235.2 (f))

EFTA Section 920(c)(2) defines the term "debit card" as "any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means." The term includes a general-use prepaid card, as that term was previously defined by the gift card provisions of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit Card Act).[33] The statute excludes paper checks from the definition of "debit card."

Proposed § 235.2(f) defines the term "debit card" and generally tracks the definition set forth in EFTA Section 920. Thus, proposed § 235.2(f)(1) generally defines the term "debit card" as "any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means." In addition, the term applies regardless of whether the issuer holds the underlying account. This is consistent with the statutory definition of "debit card" which does not require that an issuer also hold the account debited by the card, code, or device. Proposed § 235.2(f)(2) further provides that "debit card" includes a "general-use prepaid card." *See* proposed comment 2(f)–4.

Proposed comment 2(f)–1 clarifies that the requirements of this part generally apply to any card, or other payment code or device, even if it is not issued in card form. That is, the rule applies even if a physical card is not issued or if the device is issued with a form factor other than a standard-sized card. For example, an account number or code that could be used to access underlying funds in an account would be considered a debit card under the rule (except when used to initiate an ACH transaction). Similarly, the term "debit card" would include a device with a chip or other embedded mechanism that links the device to funds held in an account, such as a mobile phone or sticker containing a contactless chip that enables the cardholder to debit an account.

Proposed comments 2(f)–2 and –3 address deferred and decoupled debit cards, two types of card products that the Board believes fall within the statutory definition of "debit card" notwithstanding that they may share both credit and debit card-like attributes. Under a deferred debit arrangement, transactions are not immediately posted to a cardholder's account when the card transaction is received by the account-holding institution for settlement, but instead the funds in the account are held and made unavailable for other transactions for a specified period of time.[34] Upon expiration of the time period, the cardholder's account is debited for the amount of all transactions made using the card which were submitted for settlement during that period. For example, under some deferred debit arrangements involving consumer brokerage accounts (whether held at the issuer or an affiliate), the issuer agrees not to post the card transactions to the brokerage account until the end of the month. Regardless of the time period chosen by the issuer for deferring the posting of the transactions to the cardholder's account, deferred debit cards would be considered debit cards for purposes of the requirements of this part. Deferred debit card arrangements do not refer to arrangements in which a merchant defers presentment of multiple small dollar card payments, but aggregates those payments into a single transaction for presentment, or where a merchant requests placement of a hold on certain funds in an account until the actual amount of the cardholder's transaction is known. *See* proposed comment 2(f)–2.

Proposed comment 2(f)–3 addresses decoupled debit arrangements in which the issuer is not the institution that holds the underlying account that will be debited. That is, the issuer-cardholder relationship is "decoupled" from the cardholder's relationship with the institution holding the cardholder's account. In these "decoupled debit" arrangements, transactions are not posted directly to the cardholder's account when the transaction is presented for settlement with the card issuer. Instead, the issuer must send an ACH debit instruction to the account-holding institution in the amount of the transaction in order to obtain the funds from the cardholder's account. As noted above, the term "debit card" includes a card, or other payment code or device, that debits an account, regardless of whether the issuer holds the account. Accordingly, the Board believes it is appropriate to treat decoupled debit cards as debit cards subject to the requirements of this part.

Moreover, the Board understands that there may be incentives for some issuers to design or offer products with "credit-like" features in an effort to have such products fall outside the scope of the interchange fee restrictions to be implemented by this rulemaking. For example, an issuer may offer a product that would allow the cardholder the option at the time of the transaction to choose when the cardholder's account will be debited for the transaction. Any attempt to classify such a product as a credit card is limited by the prohibition against compulsory use under the EFTA and Regulation E. Specifically, the EFTA and Regulation E provide that no person may condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers.[35] Thus, an issuer of a charge or credit card is prohibited from *requiring* a consumer's repayment by preauthorized electronic fund transfers from a deposit account held by the consumer as a condition of opening the charge or credit card account. The Board solicits comment on whether additional guidance is necessary to clarify that deferred and decoupled debit, or any similar products, qualify as debit cards for purposes of this rule.

The proposed rule also sets forth certain exclusions from the term "debit card" in § 235.2(f)(3) to clarify the definition. Proposed § 235.2(f)(3)(i) clarifies that retail gift cards that can be used only at a single merchant or affiliated group of merchants are not subject to the requirements of this part. The Board believes that by including an explicit reference to general-use prepaid cards in the statutory definition of "debit card," Congress did not intend the interchange fee restrictions to apply to other types of prepaid cards that are accepted only at a single merchant or an affiliated group of merchants. These cards are generally used in a closed environment at a limited number of locations and are not issued for general use. *See* § 235.7(a), discussed below.

Proposed comment 2(f)–5 clarifies that two or more merchants are affiliated if they are related by either common ownership or common corporate control. For purposes of the definition of "debit card," the Board views franchisees to be under common corporate control if they are subject to a common set of corporate policies or practices under the terms of their franchise licenses. Accordingly, gift

[33] *See* EFTA Section 915(a)(2)(A).

[34] The issuer's ability to maintain the hold assumes that the issuer has received a settlement record for the transaction within the time period required under card network rules.

[35] EFTA Section 913(1); 12 CFR 205.10(e)(1).

cards that are redeemable solely at franchise locations would be excluded from the definition of debit card for cards, or other payment codes or devices, usable only at a single merchant or affiliated group of merchants, from the definition of "debit card."

Proposed § 235.2(f)(3)(ii) expands the statutory exclusion for paper checks to exempt any "check, draft, or similar paper instrument, or electronic representation thereof" from the definition of "debit card." This adjustment is proposed because in many cases paper checks may be imaged and submitted electronically for presentment to the paying bank. Proposed comment 2(f)–6 further clarifies that a check that is provided as a source of information to initiate an ACH debit transfer in an electronic check conversion transaction is not a debit card.

Finally, proposed § 235.2(f)(iii) would generally exclude ACH transactions from the requirements of this part. Specifically, the proposed exclusion provides that an account number is not a debit card when used to initiate an ACH transaction from a person's account. The Board believes that this exclusion is necessary to clarify that ACH transactions initiated by a person's provision of a checking account number are not "electronic debit transactions" for purposes of the network exclusivity and routing provisions under § 235.7. However, this exclusion is not intended to cover a card, or other payment code or device, that is used to directly or indirectly initiate an ACH debit from a cardholder's account, for example, under a decoupled debit arrangement.[36] Proposed comment 2(f)–7 sets forth this guidance.

General-Use Prepaid Cards (§ 235.2(i))

The statutory definition of "debit card" includes a "general-use prepaid card" as that term is defined under EFTA Section 915(a)(2)(A).[37] Proposed § 235.2(i) defines "general-use prepaid card" as a card, or other payment code or device, that is (1) issued on a prepaid basis in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (2) redeemable upon presentation at multiple, unaffiliated merchants or service providers for goods or services, or usable at ATMs.

The proposed definition of "general-use prepaid card" generally tracks the definition as it appears under EFTA Section 915(a)(2)(A), with modifications to simplify and clarify the definition.[38] For example, the proposed rule refers to cards issued in a "specified" amount to capture a card, or other payment code or device, whether it is issued in a predenominated amount or in an amount requested by a cardholder in a particular transaction.

The inclusion of general-use prepaid cards in the definition of "debit card" under EFTA Section 920(c)(2)(B) refers only to the term "general-use prepaid card" as it is defined in EFTA Section 915(a)(d)(A), and does not incorporate the separate exclusions to that term that are set forth in the gift card provisions of the Credit Card Act.[39] Thus, for purposes of this proposed rule, the definition of "general-use prepaid card" would include the cards, or other payment codes or devices, listed under EFTA Section 915(a)(2)(D) to the extent they otherwise meet the definition of "general-use prepaid card."[40]

Proposed comment 2(i)–1 clarifies that a card, or other payment code or device, is "redeemable upon presentation at multiple, unaffiliated merchants" if, for example, the merchants agree, pursuant to the rules of the payment network, to honor the card, or other payment code or device, if it bears the mark, logo, or brand of a payment network. (*See,* however, proposed comment 2(f)–5, discussed above, clarifying that franchises subject to a common set of corporate policies or practices are considered to be affiliated.)

Proposed comment 2(i)–2 provides that a mall gift card, which is generally intended to be used or redeemed at participating retailers located within the same shopping mall or in some cases, within the same shopping district, would be considered a general-use prepaid card if it is also network-branded, which would permit the card to be used at any retailer that accepts that card brand, including retailers located outside the mall.

In some cases, a group of unaffiliated merchants may jointly offer a prepaid card that is only redeemable at the participating merchants. For example, "selective authorization" cards may be offered to encourage sales within a shopping mall or district or at merchants located in the same resort. Selective authorization cards generally are issued by a financial institution or member of a card network, rather than a program sponsor as in the case of many retail gift card programs. Transactions made using such cards are authorized and settled over the payment card networks just like other general-use prepaid cards. In addition, interchange transaction fees may be charged in connection with these cards because they are processed over a payment card network.

Selective authorization programs enable a merchant to offer gift cards to its customers and ensure that card funds are spent only within the participating merchant(s) without incurring the costs of setting up a separate program. There may be little difference between these programs and closed-loop retail gift card programs operated by a single retailer, but for the fact that these cards are accepted at merchants that are unaffiliated. However, requiring these selective authorization cards to comply with the network exclusivity and routing restrictions could be problematic and costly for the participating merchants with little corresponding benefit. Accordingly, comment is requested on whether a prepaid card that is accepted at a limited number of unaffiliated participating merchants and *does not* carry a network brand should also be considered a "general-use prepaid card" under the rule.

G. Sec. 235.2(g) Designated automated teller machine network (Designated ATM network)

EFTA Section 920(a)(7)(C) defines a "designated automated teller machine network" as either (1) all ATMs identified in the name of the issuer or (2) any network of ATMs identified by the issuer that provides reasonable and convenient access to the issuer's customers. Proposed § 235.2(g) implements this definition substantially as set forth in the statute.

The Board is also proposing to clarify the meaning of "reasonable and convenient access," as that term is used in § 235.2(g)(2). Proposed comment 2(g)–1 provides that an issuer provides reasonable and convenient access, for example, if, for each person to whom a card is issued, the issuer provides access to an ATM within the metropolitan statistical area (MSA) in which the last known address of the person to whom the card is issued is located, or if the address is not known,

[36] However, a decoupled debit card issued by a merchant that can be used only at that merchant or its affiliate(s) may qualify for the separate exclusion under proposed § 235.2(f)(3)(i).

[37] *See* EFTA Section 920(c)(2)(B).

[38] *See also* 12 CFR 205.20(a)(3).

[39] For example, under the gift card provisions of the Credit Card Act, general-use prepaid cards do not include cards that are not marketed to the general public or cards issued in paper form only. *See* EFTA Section 915(a)(2)(D)(iv) and (v).

[40] The Board further notes that had Congress intended to apply the exclusions in EFTA Section 915(a)(2)(D) to the definition of "general-use prepaid card" for purposes of this rule, it would have been unnecessary to separately create an exemption for certain reloadable prepaid cards that are not marketed or labeled as a gift card. *See* EFTA Section 920(a)(7)(ii).

where the card was first purchased or issued, in order to access an ATM in the network. The purpose of this comment is to clarify that if an issuer does not have its own network of proprietary ATMs, as provided in § 235.2(g)(1), that the network the issuer identifies as its designated ATM network is one in which a person using a debit card can access an ATM with relative ease. The Board believes that having to travel a substantial distance from where the person is located, as determined by the last known address of the person to whom the card is issued, for an ATM in the network is neither reasonable nor convenient. The MSA is a common, well-known way of defining a community.[41] Therefore, the Board is proposing the MSA as a proxy for a reasonable distance from the person's location.

Furthermore, because a debit card includes a general-use prepaid card, for which the issuer may not have the address of the person using the card, the proposed comment provides that the issuer may use the location of where the card was first purchased or issued. The issuer of a general-use prepaid card may not have address information because either the person to whom the card is issued is not the ultimate user of the card, such as in the case of a gift card, or the issuer does not collect address information for the product. In these instances, the only location known to the issuer is the place where the card was first purchased or issued, and the issuer may assume that the person using the card is located in that same area. The Board also requests comment on whether additional clarification or guidance is needed for how an issuer may identify a network of automated teller machines that provides reasonable and convenient access to the issuer's cardholders.

H. Sec. 235.2(h) Electronic debit transaction

EFAT section 920(c)(5) defines the term "electronic debit transaction" as "a transaction in which a person uses a debit card." The Board's proposed definition in § 235.2(h) adds two clarifying provisions.

First, proposed § 235.2(h) clarifies that the term "electronic debit transaction" is a transaction in which a person uses a debit card as "a form of payment." The statute defines payment card network, in part, as a network a person uses to accept a debit card as a form of payment. For clarity, the Board proposes to incorporate that requirement into the definition of electronic debit transaction.

Second, the statutory definition is silent as to whether use of the debit card must occur within the United States. Proposed § 235.2(h) limits electronic debit transactions to those transactions where a person uses a debit card for payment in the United States. The Board found no indication in the statute that Congress meant to apply the interchange provisions extraterritorially. Moreover, if a person uses a debit card outside the United States, even if such use is to debit an account located in the United States, the amount of the interchange transaction fees the issuer may receive often is determined by the network rules for cross-border transactions or the laws or regulations of the country in which the merchant is located. Therefore, electronic debit transactions subject to the proposed rule are those that occur at a merchant located within the United States.

Proposed comment 2(h)–1 explains that the term "electronic debit transaction" includes transactions in which a person uses a debit card other than for the initial purchase of goods or services. For example, after purchasing goods or services, a person may decide that such goods and services are unwanted or defective. If permitted by agreement with the merchant, that person may return the goods or cancel the services and receive a credit using the same debit card used to make the original purchase. Proposed § 235.2(h) covers such transactions. The Board understands, however, that issuers typically do not receive interchange fees for these transactions. Proposed comment 2(h)–2 clarifies that transactions in which a person uses a debit card to purchase goods or services and also receives cash back from the merchant are electronic debit transactions.

I. Sec. 235.2(j) Interchange transaction fee

Proposed § 235.2(j) generally incorporates the EFTA Section 920(c)(8)'s definition of "interchange transaction fee" that defines the term as "any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction." A payment card network may determine interchange transaction fees according to a schedule that is widely applicable, but also may permit bilateral negotiation of fees between issuers and acquirers or merchants, as well as specialized interchange transaction fee arrangements.

As discussed above, interchange transaction fees today are used to reimburse issuers for their involvement in electronic debit transactions by transferring value between acquirers and issuers. In general, payment card networks establish the interchange transaction fees, although the issuers are receiving the fees by reducing the amount remitted for a particular transaction by the amount of that transaction's interchange transaction fee. Therefore, the merchants or acquirers are paying the amount of the interchange transaction fee. The proposed definition, however, clarifies that interchange transaction fees are paid by merchants or acquirers. *See* proposed comment 2(j)–1.

Proposed comment 2(j)–2 restates the rule that interchange fees are limited to those fees established, charged or received by a payment card network for the purpose of compensating the issuer, and not for other purposes, such as to compensate the network for its services to acquirers or issuers.

J. Sec. 235.2(k) Issuer

Proposed § 235.2(k) incorporates the statute's definition of "issuer" that defines the term as "any person who issues a debit card or the agent of such person with respect to the card." Proposed § 235.2(k) follows the statutory definition, but removes the phrase "or the agent of such person with respect to the card." Because agents are, as a matter of law, held to the same restrictions with respect to the agency relationship as their principals, the Board does not believe that removing this clause will have a substantive effect.

Issuing a debit card is the process of providing a debit card to a cardholder. The issuing process generally includes establishing a direct contractual relationship with the cardholder with respect to the card and providing the card directly or indirectly to the cardholder. The debit card provided may or may not have the issuer's name on the card. For example, a prepaid card may be issued by a bank that has partnered with another entity (*e.g.,* a retail store) and the other entity's name may be on the prepaid card. Further, as discussed below, the issuer is not necessarily the institution that holds the cardholder's account that will be debited.

Similar to merchant-acquirer relationships, the issuer-cardholder relationship varies. Proposed comments 2(k)–2 through 2(k)–5 clarify which entity is the issuer in the most prevalent issuing arrangements. In the simple four-party system, the financial

[41] *See* U.S. Census Bureau for information on MSAs, available at *http://www.census.gov/population/www/metroareas/metroarea.html.*

institution that holds the account is the issuer because that is the institution that directly or indirectly provides the debit card to the cardholder, holds the cardholder's account and has the direct contractual relationship with the cardholder with respect to the card. If the debit card is a prepaid card, the cardholder may receive the card from a merchant or other person, and thus may not receive the card directly from the issuing bank, which is the entity that holds the account that pools together the funds for many prepaid cards. *See* proposed comment 2(k)–2.

In contrast, in a three-party system, the network typically provides the debit card or prepaid card directly to the cardholder or through an agent. Generally, the network also has a direct contractual relationship with the cardholder. Notwithstanding the other roles the network may have with respect to the transaction, the network is considered an issuer under proposed § 235.2(k) because it provides the card to the cardholder, and may also be the account-holding institution. *See* proposed comment 2(k)–3.

A variation of the issuer relationship within the four-party and three-party systems involves the licensing or assignment of Bank Identification Numbers (BINs), which are numbers assigned to financial institutions by the payment card networks for purposes of issuing cards. Some members of payment card networks permit other entities that are not members to issue debit cards using the member's BIN. The entity permitting such use is referred to as the "BIN sponsor." The entity using the BIN sponsor's BIN ("affiliate member") typically holds the account of the cardholder and directly or indirectly provides the cardholder with the debit card. The cardholder's direct relationship is with the affiliate member. Proposed comment 2(k)–4.i and .ii describes two circumstances involving BIN sponsorship arrangements and provides guidance on the entity that would be considered to be the issuer in those circumstances.

Another variant of the issuer relationship within the four-party and three-party systems is the decoupled debit card arrangement. In a decoupled debit card arrangement, a third-party service provider (which may or may not be a financial institution) issues a debit card to the cardholder and enters into a contractual relationship with the cardholder with respect to the decoupled debit card. Therefore, proposed comment 2(k)–5 clarifies that the entity directly or indirectly providing the cardholder with the card is considered the issuer under proposed § 235.2(k).

Some issuers outsource to a third party some of the functions associated with issuing cards and authorizing, clearing, and settling debit card transactions. A third party that performs certain card-issuance functions on behalf of an issuer would be subject to the same restrictions as the issuer in the performance of those functions. An issuer that outsources certain issuing functions retains the underlying relationship with the cardholder and should retain responsibility for complying with the rule's requirements as they pertain to issuers. Therefore, the Board's proposed definition of "issuer" does not include the phrase "or agent of the issuer with respect to such card." The Board requests comment on whether there are circumstances in which an agent of an issuer also should be considered to be an issuer within the rule's definition.

Proposed § 235.2(k)'s definition of "issuer" applies throughout this part, except for the provisions exempting small issuers.[42] For purposes of that exemption, EFTA Section 920 limits the term "issuer" to the person holding the account that is debited through the electronic debit transaction. For example, issuers of decoupled debit cards are not considered issuers for purposes of the small issuer exemption because they do not hold the account being debited.

The Board requests comment on all aspects of the issuer definition. The Board specifically requests comment on whether the appropriate entity is deemed to be the issuer in relation to the proposed examples.

L. Sec. 235.2(l) Merchant

The statute does not define the term "merchant." The term is used throughout the proposed rule, and the Board is proposing to define a merchant as a person that accepts a debit card as payment for goods or services.

M. Sec. 235.2(m) Payment card network

EFTA Section 920(c)(11) defines the term "payment card network" as (1) an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and (2) that a person uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions. Proposed § 235.2(m) follows this definition, with revisions for clarity.

Under the proposed rule, a payment card network is generally defined as an "entity that directly or indirectly provides the proprietary services, infrastructure, and software for authorization, clearance, and settlement of electronic debit transactions." Because the interchange fee restrictions and network exclusivity and merchant routing provisions of the Dodd-Frank Act do not apply to credit card transactions, the Board believes it is appropriate to exclude from the proposed definition the reference to credit cards in the statutory definition to avoid unnecessary confusion. No substantive change is intended. Likewise, the Board does not believe its necessary to state that a payment card network is an entity that a person uses in order to accept debit cards as a form of payment, because proposed § 235.2(h) defines the term "electronic debit transaction," as use of a debit card "as a form of payment."

In addition, the term "payment card network," as defined in EFTA Section 920, could be interpreted broadly to include *any* entity that is involved in processing an electronic debit transaction, including the acquirer, third-party processor, payment gateway, or software vendor that programs the electronic terminal to accept and route debit card transactions. Each of these entities arguably provide "services, infrastructure, and software" that are necessary for authorizing, clearing, and settling electronic debit transactions. However, the Board does not believe that this is the best interpretation in light of the statute's objectives. Instead, the Board believes that the better interpretation is that in general, the term "payment card network" only applies to an entity that establishes the rules, standards, or guidelines that govern the rights and responsibilities of issuers and acquirers involved in processing debit card transactions through the payment system. Accordingly, proposed § 235.2(m)(2) makes this clarification. The rules, standards, or guidelines may also govern the rights and responsibilities of participants other than issuers and acquirers. *See* proposed comment 2(m)–1.

In certain cases, such as in a three-party system, the same entity may serve multiple roles, including that of the payment card network, the issuer, and the acquirer. Proposed comment 2(m)–1 clarifies that the term "payment card network" would also cover such entities to the extent that their rules, standards,

[42] *See* discussion of proposed § 235.5(a) in the section-by-section analysis.

or guidelines also cover their activities in their role(s) of issuer and/or acquirer. Proposed comment 2(m)–1 further clarifies that the term "payment card network" would generally exclude acquirers, issuers, third-party processors, payment gateways, or other entities that may provide services, equipment, or software that may be used in authorizing, clearing, or settling electronic debit transactions, unless such entities also establish guidelines, rules, or procedures that govern the rights and obligations of issuers and acquirers involved in processing an electronic debit transactions through the network. For example, an acquirer is not considered to be a payment card network due to the fact that it establishes particular transaction format standards, rules, or guidelines that apply to electronic debit transactions submitted by a merchant that uses the acquirer's services, because such standards, rules, or guidelines would apply only to the merchant using the acquirer's services, and not to other entities that may also be involved in processing those transactions, such as the card issuer.

The Board requests comment on whether other non-traditional or emerging payment systems would be covered by the statutory definition of "payment card network." For example, consumers may use their mobile phone to send payments to third parties to purchase goods or services with the payment amount billed to their mobile phone account or debited directly from the consumer's bank account. In addition, consumers may use a third party payment intermediary, such as PayPal, to pay for Internet purchases, using the consumer's funds that may be held by the intermediary or in the consumer's account held at a different financial institution. In both examples, the system or network used to send the payment arguably provide the "proprietary services, infrastructure, and software for authorization, clearance, and settlement of electronic debit transactions." Transactions involving these methods of payment typically are subject to rules and procedures established by the payment system. If such systems are not covered, the Board requests specific comment how it should appropriately distinguish these payment systems from traditional debit card payment systems that are subject to the rule.

N. Sec. 235.2(n) Person

The term "person" is not defined in the EFTA. The proposed definition incorporates the definition of the term in existing Board regulations.[43]

O. Sec. 235.2(o) Processor

EFTA Section 920 uses the term "processor" but does not define the term. Proposed § 235.2(o) defines the term "processor" as a person that processes or routes electronic debit transactions for issuers, acquirers, or merchants.

P. Sec. 235.2(p) United States

Proposed § 235.2(p) defines the term "United States." The proposed definition is modified from the EFTA's definition of "State." (15 U.S.C. 1693a(10)).

III. Sec. 235.3 Reasonable and proportional interchange transaction fees

Proposed § 235.3 sets forth standards for assessing whether the amount of any interchange transaction fee that an issuer receives or charges with respect to an electronic debit transaction is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

A. Statutory Considerations

1. Reasonable and Proportional to Cost

As noted above, EFTA Section 920 requires the Board to establish standards for assessing whether the amount of any interchange transaction fee an issuer receives or charges with respect to an electronic debit transaction is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. EFTA Section 920 does not define "reasonable" or "proportional." The Board has found only limited examples of other statutory uses of the terms "reasonable" or "proportional" with respect to fees.[44] One example is Section 149 of the Truth in Lending Act (TILA), which limits credit card penalty fees for violations of the cardholder agreement to fees that are reasonable and proportional to the violation. In implementing standards under TILA Section 149, the Board relied on the commonly accepted legal definition of "reasonable" ("fair, proper, or moderate") and the commonly accepted definition of "proportional" ("corresponding in degree, size, or intensity" or "having the same or constant ratio").[45]

Although the Board believes the previously relied upon definitions can inform this rulemaking, the Board notes that reasonableness and proportionality have different connotations in the context of interchange transaction fees than in the context of penalty fees. The TILA provision related to the reasonableness and proportionality of the fees charged when a violation of the account terms occurred. TILA required the Board to consider the costs incurred by issuers as a result of violations and other factors, including the need to deter violations. In considering whether an interchange fee is reasonable, the Board proposes to consider whether the fee is fair or proper in relation to both the individual issuer's costs as well as the costs incurred by other issuers. As discussed further below, the Board believes it may determine that certain fee levels are reasonable based on overall issuer cost experience, even if the individual issuer's costs are above (or below) that fee level.

Similarly, in considering whether an interchange fee is proportional to the issuer's costs, the Board does not believe that proportionality must be interpreted to require identical cost-to-fee ratios for all covered issuers (although a constant cost-to-fee ratio would result from the issuer-specific standard discussed below for issuers with allowable costs below the cap). Rather, if the Board were to adopt a safe harbor or a fee cap (discussed further below) that it determined to be reasonable, the cost-to-fee ratio of any issuer that received fees at or below the safe harbor or cap would be deemed to meet the proportionality standard.

2. Considerations for Standards

In EFTA Section 920, Congress set forth certain factors that the Board is required to consider when establishing standards for determining whether interchange transaction fees are reasonable and proportional to the cost

[43] Regulation Z (Truth in Lending Act), 12 CFR 226.2(a)(22); Regulation CC (Availability of Funds and Collections of Checks), 12 CFR 229.2(yy);

[44] Several public utility rate-setting statutes require "just and reasonable" rates. *See, e.g.,* Natural Gas Act, 15 U.S.C. 717 *et seq.* In the public utility rate-setting context, a "just and reasonable" rate requires that the public utility be able "to operate successfully, to maintain financial integrity, to attract capital, and to compensate its investors for the risk assumed." *Duquense Light Co.* v. *Barash,* 488 U.S. 299 (1989). The Board believes that the similarities between these statutes and Section 920, however, are limited. Public utility rate-setting involves unique circumstances, none of which are present in the case of setting standards for interchange transaction fees. Issuers are unlike public utilities, which, in general, are required to make their services regularly available to the public. In addition, unlike in the case of public utilities where the utility's only source of revenue is the fees charged for the service or commodity, issuers have other sources, besides interchange fees, from which they can receive revenue to cover their costs of operations and earn a profit.

[45] *See* 75 FR 37526, 37531–32 (June 29, 2010), *Black's Law Dictionary* at 1272 (7th ed. 1999)(defining "reasonable") and *Merriam Webster's Collegiate Dictionary* at 936 (10th ed. 1995) (defining "proportional").

incurred by the issuer. Specifically, EFTA Section 920 requires the Board to (1) consider the functional similarity between electronic debit transactions and checks, which are required to clear at par through the Federal Reserve System and (2) distinguish between the incremental cost of authorization, clearance, and settlement of a particular transaction, which shall be considered, and other costs that are not specific to a particular transaction, which shall not be considered. Although Section 920 requires only the *consideration* of these factors, the Board believes that they are indicative of Congressional intent with respect to the implementation of Section 920, and therefore provide a useful measure for which costs should and should not be included in "the cost incurred * * * with respect to the transaction."

Similarities to Check

There are a number of similarities between the debit card and check payment systems. Both are payment instruments that result in a debit to the payor's asset account. Debit card payments are processed electronically, and while historically check processing has been paper-based, today virtually all checks are processed and collected electronically. Further, depository institutions have begun to offer their depositors remote deposit capture services to enable merchants to deposit their checks electronically. For both debit card and check payments, merchants pay fees to banks, processors, or intermediaries to process the payments. Settlement time frames are roughly similar for both payment types, with payments settling within one or two days of deposit.

However, there are also differences between debit card and check payment systems.

Open versus closed systems. Debit card networks are closed systems that both issuing and acquiring banks must join in order to accept and make payments. To accept debit card payments, issuing and acquiring banks must decide which debit card networks to join, establish a relationship with those networks, and agree to abide by those networks' rules. In contrast, the check system is an open system in which a merchant simply needs a banking relationship through which it can collect checks in order to be able to accept check payments from its customers. The merchant's bank need not join a network in order to collect a check.

Payment authorization. Payment authorization is an integral part of the processing of a transaction on a debit card network. As part of the payment authorization process, a card issuer determines, among other things, whether the card is valid and whether there are sufficient funds to cover the payment. In contrast, payment authorization is not an inherent part of the check acceptance process, and therefore a merchant does not know whether the check will be returned unpaid at the time the merchant accepts the check. However, a merchant that wants to better manage its risks associated with unpaid checks can purchase value-added check verification and guarantee services from various third-party service providers.

Processing and collection costs. In the check system, the payee's bank (which is analogous to the merchant-acquiring bank for debit cards) either incurs costs to present a check directly to the payor's bank (which is analogous to the card-issuing bank) or pays fees to intermediaries to collect and present the check to the payor's bank. In either case, the payor's bank does not incur fees to receive check presentments unless it has agreed to pay a fee to receive its presentments electronically. In debit card systems, the merchant-acquiring and card-issuing banks both pay fees to the network to process payments for their respective customers.

Par clearing. In the check system, payments clear at par. When a payee's bank presents a check to the payor's bank, the payor's bank pays and the payee's bank receives the face value of the check. As discussed above, a payee's bank may pay fees to an intermediary for check collection services; however, check payments are cleared and settled for the full face value of the checks. The payee's bank is not required to pay a fee to the payor's bank to receive the settlement for the full value of the checks presented. In contrast, in the debit card system, because interchange fees represent fees paid by the merchant-acquiring bank to card-issuing banks, the merchant-acquiring bank receives less than the full value of debit card payments.

Routing. In the check system, the payee's bank decides the avenue through which it collects checks. Checks can be presented directly to the payor's bank, collected through an intermediary for a fee, or exchanged through a clearing house.[46] The decision is often based on the avenue that offers the lowest clearing cost. For a debit card payment, the merchant's choice with regard to routing is limited to the set of networks whose cards the merchant accepts and that are also available to process a transaction for its customer's card. Merchant payment routing may be further limited if the card issuer has designated routing preferences that must be honored when a customer presents a card that can be used for payment on multiple (typically PIN) networks. Such preferences may result in a transaction being routed to a network that imposes a higher fee on the merchant's bank (and hence the merchant) than if the payment were processed on another available network.

Ability to reverse transactions. In the check system, there is a limited amount of time during which the payor's bank may return a check to the payee's bank. Specifically, a check must be returned by the "midnight deadline," which is midnight of the banking day after the check was presented to the payor's bank for payment. After the midnight deadline passes, a payor's bank can no longer return the payment through the check payment system, although it may have legal remedies in the event of a dispute or financial loss.[47] In contrast, in the debit card system, the time period within which a transaction may be reversed is not as limited. Typically, many disputes can be addressed through network chargeback processes without having to rely on legal remedies. These chargebacks and disputes can be handled through the network with procedures that are delineated in network rules.

Activity Costs To Be Considered

As noted above, the statute provides that, in establishing standards for assessing whether an interchange fee is reasonable and proportional to "the cost incurred by the issuer with respect to the transaction," the Board shall consider the incremental cost of authorizing, clearing, and settling a particular transaction and shall not consider other costs that are not specific to a particular transaction.[48] The statute is silent with respect to costs that are specific to a particular transaction other than incremental costs incurred by an issuer for authorizing, clearing, and settling the transaction.

After considering several options for the costs that may be taken into account in setting interchange transaction fees ("allowable costs"), the Board proposes such costs be limited to those associated with authorization, clearing, and settlement of a transaction. This formulation includes only those costs

[46] For checks exchanged through a clearing house, both the payor's bank and the payee's bank must be members of or participate in the clearing house.

[47] Uniform Commercial Code 4–301 and 4–302.

[48] Sec. 920(a)(3).

that are specifically mentioned for consideration in the statute. If an issuer outsources its authorization, clearance, and settlement activities, allowable costs would include fees paid to a processor for authorization, clearance, and settlement services.

In the definition of allowable costs, the Board proposes to exclude network processing fees (*i.e.,* switch fees) paid by issuers.[49] Card issuers pay such fees to payment card networks for each transaction processed over those networks. Although these network fees typically are not associated with one specific component of authorization, clearance, or settlement of the transaction, a particular transaction cannot be authorized, cleared, and settled through a network unless the issuer pays its network processing fees. The Board proposes that network processing fees be excluded from allowable costs, because the Board recognizes that if network processing fees were included in allowable costs, acquirers (and, by extension, merchants) might be in the position of effectively paying all network fees associated with debit card transactions. That is, an acquirer would pay its own network processing fees directly to the network and would indirectly pay the issuer's network processing fees through the allowable costs included in the interchange fee standard.[50]

The Board considered including other costs associated with a particular transaction that are not incurred by the issuer for its role in authorization, clearing, and settlement of that transaction. Such costs might include, for example, cardholder rewards that are paid by the issuer to the cardholder for each transaction. The Board does not view the costs of cardholder rewards programs as appropriate for consideration within the context of the statute. Other costs associated with a particular debit transaction might also include costs associated with providing customer service to cardholders for particular transactions, such as dealing with cardholder inquiries and complaints about a transaction. Given the statute's mandate to consider the functional similarities between debit transactions and check transactions, the Board proposes that allowable costs be limited to those that the statute specifically allows to be considered, and not be expanded to include additional costs that a payor's bank in a check transaction would not recoup through fees from the payee's bank.

The Board requests comment on whether it should allow recovery through interchange fees of other costs of a particular transaction beyond authorization, clearing, and settlement costs. If so, the Board requests comment on what other costs of a particular transaction, including network fees paid by issuers for the processing of transactions, should be considered allowable costs. The Board also requests comment on any criteria that should be used to determine which other costs of a particular transaction should be allowable.

The Board considered limiting the allowable costs to include only those costs associated with the process of authorizing a debit card transaction, because this option may be viewed as consistent with a comparison of the functional similarity of electronic debit transactions and check transactions. Among the most prominent differences between debit cards and checks is the existence of authorization for a debit card transaction where the deposit account balance is checked at the time of the transaction to ensure that the account has sufficient funds to cover the transaction amount. Clearing and settlement occur for both debit cards and checks, but for checks there is nothing analogous to an interchange fee to reimburse the issuer for the cost of clearing and settling a transaction. However, because the statute instructs the Board to also consider the costs of clearance and settlement, the Board proposes to include those costs. The Board requests comment on whether it should limit allowable costs to include only the costs of authorizing a debit card transaction.

Cost Measurement

As noted above, the statute specifically requires consideration of the "incremental" cost of authorization, clearance, and settlement of a particular transaction. There is no single, generally-accepted definition of the term "incremental cost." One commonly-used economic definition of "incremental cost" refers to the difference between the cost incurred by a firm if it produces a particular quantity of a good and the cost incurred by that firm if it does not produce the good at all.[51] Other definitions of incremental cost consider the cost of producing some increment of output greater than a single unit but less than the entire production run. However, under any of these definitions, the increment of production is larger than the cost of any particular transaction (and, in the first definition, as large as the entire production run in the first case).[52] As a result, the Board believes that these definitions of incremental cost do not appropriately reflect the incremental cost of a particular transaction to which the statute refers.

The Board proposes that the interchange fee standard allow for the inclusion of the per-transaction value of costs that vary with the number of transactions (*i.e.*, average variable cost) within the reporting period. This cost calculation yields the cost of a typical or average transaction. This measure of per-transaction cost does not consider costs that are shared with other products of an issuer, such as common fixed or overhead costs, which would still be incurred in the absence of debit card transactions. For example, the Board does not believe that other costs of deposit accounts or, more generally, depository institutions, which cannot be attributable to debit card transactions, are appropriate to include in allowable costs. While a debit card program may not exist if certain costs are not incurred, such as account set-up costs or corporate overhead costs, it does not follow that those costs would be avoided in the absence of a debit card program.

However, if variable costs of authorizing, clearing, and settling debit card transactions are shared with credit card operations, the Board believes that some portion of such costs should be allocated to debit card transactions. For example, these costs may be recorded jointly in internal cost accounting systems or not separated on third-party processing invoices. These costs should be allocated to debit cards based on the proportion of debit card transactions to total card transactions.

[49] These fees do not include processing fees paid by an issuer to a network in its role as processor (*i.e.,* a role equivalent to that of an issuer's third-party processor).

[50] Such an arrangement would be similar to traditional paper-check processing where the payee's bank typically pays all of the processing costs, while the payor's bank typically pays no processing fees. However, this arrangement would be consistent with electronic check collection systems where both the payor's bank and payee's bank generally pay processing fees.

[51] Baumol, William J., John C. Panzar, and Robert D. Willig (1982), *Contestable Markets and the Theory of Industry Structure.* New York: Harcourt Brace Jovanovich. This definition involves any fixed or variable costs that are specific to the entire production run of the good and would be avoided if the good were not produced at all. Notably, this measurement excludes any common costs across goods that a firm produces, such as common fixed overhead costs, as those costs would still be incurred if production of the good of interest were ceased.

[52] Fundamentally, none of these definitions correspond to a per-transaction measure of incremental cost that could be applied to any particular transaction, regardless of the particular transaction used for such a definition.

This measure would *not* consider costs that are common to all debit card transactions and could never be attributed to any *particular* transaction (*i.e.,* fixed costs), even if those costs are specific to debit card transactions as a whole. Such fixed costs of production could not be avoided by ceasing production of any particular transaction (except perhaps the first).

The Board recognizes that, by distinguishing variable costs from fixed costs, this standard imposes a burden on issuers by requiring issuers to segregate costs that vary with the number of transactions from those that are largely invariant to the number of transactions, within the reporting period. The Board also acknowledges that differences in cost accounting systems across depository institutions may complicate enforcement by supervisors. Finally, the Board recognizes that excluding fixed costs may prevent issuers from recovering through interchange fees some costs associated with debit card transactions. However, as noted above, the Board also recognizes that issuers have other sources, besides interchange fees, from which they can receive revenue to help cover the costs of debit card operations. Moreover, such costs are not recovered from the payee's bank in the case of check transactions.

The Board also considered a cost measurement in terms of marginal cost or, in other words, the cost of an additional transaction. However, marginal cost can be different for each unit of output, and it is unclear which unit of output's cost should be considered, although often it is assumed to be the last unit. Notably, if marginal cost does not vary materially over the relevant volume range, then average variable cost will provide a close approximation to marginal cost for any particular transaction.[53] In addition, average variable cost is more readily measurable than marginal cost for issuers and supervisors. Specifically, marginal cost for a given issuer cannot be calculated from cost accounting data; instead, it must be identified and estimated based on assumptions about costs that would have been incurred if an issuer's transaction volume had differed from that which actually occurred.[54]

The Board requests comment on whether it should include fixed costs in the cost measurement, or alternatively, whether costs should be limited to the marginal cost of a transaction. If the latter, the Board requests comment on how the marginal cost for that transaction should be measured.

B. Proposed Interchange Fee Standards

The statute requires that the amount of any interchange transaction fee that an issuer receives or charges with respect to an electronic debit transaction must be "reasonable and proportional to the cost incurred by the issuer with respect to the transaction."[55] Proposed § 235.3 sets forth two alternatives (referred to as "Alternative 1" and "Alternative 2") for determining the level of the allowable interchange fee. Alternative 1 proposes an issuer-specific approach combined with a safe harbor and a cap. Under Alternative 1, an issuer may receive or charge interchange transaction fees at or below the safe harbor amount or based on a determination of its allowable costs, up to a cap. Alternative 2 proposes a stand-alone cap. The Board proposes to adopt only one of the alternatives and requests comment on each, as well as on any other alternatives that could be applied.

1. Alternative 1—Issuer-Specific up to a Cap, With a Safe Harbor

Under Alternative 1, an issuer could comply with the regulatory standard for interchange fees by calculating allowable per-transaction cost, based on the allowable costs described by the Board, and ensuring that it did not receive an interchange fee for any transaction in excess of its allowable per-transaction cost. Proposed § 235.3(c) sets forth an issuer's allowable costs. As discussed above, these are the issuer's costs that are attributable to its role in authorization, clearance, and settlement of electronic debit transactions and that vary, up to existing capacity limits within a reporting period, with the number of electronic debit transactions sent to the issuer. Network fees paid by the issuer are excluded from allowable costs. Proposed § 235.3(b)(2) limits the amount of any interchange fee that an issuer may receive to no more than the allowable costs divided by the number of electronic debit transactions on which the issuer received or charged an interchange transaction fee in the calendar year.

Alternative 1 also provides for a cap of 12 cents per transaction (proposed § 235.3(b)(2)). An issuer could not receive an interchange fee above the cap regardless of its allowable cost calculation. In addition, Alternative 1 would deem any interchange fee at or below a safe harbor level of 7 cents per transaction to be in compliance with the regulatory standard (proposed § 235.3(b)(1)), regardless of the issuer's allowable per-transaction cost.

Under Alternative 1, each payment card network could set interchange fees for each issuer (1) at or below the safe harbor[56] or (2) at a level for the issuer that would not exceed the issuer's allowable per-transaction costs up to the cap.[57] A network would be permitted to set fees that vary with the value of the transaction (*ad valorem* fees), as long as the maximum amount of the interchange fee received by an issuer for any electronic debit transaction was not more than that issuer's maximum permissible interchange fee. A network would also be permitted to establish different interchange fees for different types of transactions (*e.g.,* card-present and card-not-present) or types of merchants, as long as each of those fees satisfied the relevant limits of the standard. Each issuer's supervisor would verify that the amount of any interchange fee received by an issuer is, in fact, commensurate with the safe harbor, the issuer's allowable per-transaction costs, or the cap, as appropriate. Each of the three elements of this alternative, the issuer-specific determination, the cap, and the safe harbor, are discussed in more detail below.

Issuer-Specific Determination

EFTA Section 920(a)(2) requires that "the amount of any interchange transaction fee that an issuer may receive or charge * * * be reasonable and proportional to the cost incurred by the issuer with respect to the transaction." One reading of that provision is that the use of the definite article "the" in the second half of the standard suggests that the interchange fee limitation should be determined separately for each issuer and each transaction presented to that issuer. As discussed below, however, such an approach would be impractical and difficult to administer and enforce, and would introduce undesirable economic incentives.

Measuring the allowable cost of each transaction would be highly impracticable due to the volume of

[53] In particular, if marginal cost is constant, then average variable cost equals marginal cost. More generally, average variable cost equals the average marginal cost across all transactions.

[54] *See,* Turvey, Ralph "What are Marginal Costs and How to Estimate Them?" University of Bath School of Management, Centre for the Study of Regulated Industries, Technical Paper 13(2000).

[55] *See* Sec. 920(a)(2) of the EFTA.

[56] This rule would not require a payment card network to set an interchange fee above the safe harbor. Whether a network would implement an issuer-specific interchange fee is the network's prerogative.

[57] Under this option, if a network planned to establish interchange fees on a per-issuer basis above the safe harbor, an issuer would report its maximum allowable interchange fee to the network.

transactions and the fact that the cost of each transaction is likely not known when the interchange fee is charged. The Board believes that the average variable cost, as discussed above, provides a reasonable approximation of an issuer's per-transaction cost for its role in authorization, clearance, and settlement. The Board believes that a maximum interchange fee determined on an issuer-specific basis as provided in Alternative 1 is both reasonable, in that it reflects only those allowable costs identified by the Board (up to a cap, discussed further below), and is directly proportional to the issuer's actual costs.

From an economic perspective, an issuer-specific determination directly links the compensation through interchange fees for each issuer to that issuer's specific costs. A major drawback of this approach is that it would not provide incentives for issuers to control their costs. In particular, an issuer that is eligible to recoup its costs under an issuer-specific determination with no cap would face no penalty for having high costs. Conversely, because a reduction in costs would lead to a reduction in an issuer's interchange fee, an issuer would receive no reward for reducing its costs (in the absence of a safe harbor). As a result, issuers would have no incentive to minimize their costs and may incur higher costs than they would otherwise. An issuer-specific determination might also encourage over-reporting of costs by an issuer because any inflation of the reported costs would be directly rewarded with a higher interchange fee for the issuer. Such undesirable incentive properties have generally led economists to advocate the abandonment of cost-of-service regulation in regulated industries in favor of approaches that yield better incentives to the regulated entities.[58]

An issuer-specific determination, on its own, would also place a significant implementation and administration burden on industry participants and supervisors. Each issuer would have to account for its costs in a manner that enables it to segregate allowable costs that could be recovered through the interchange fee from its other costs, tabulate those costs on an ongoing basis, and report them to the networks in which it participates. A network that set issuer-specific fees would need to incorporate such fees into its fee schedules, including the operational ability to distinguish among many different issuers in order to apply different rates to each of those issuers' transactions. The issuers' supervisors would need to evaluate each issuer's reported costs and verify that each issuer's interchange fees appropriately reflect those reported costs.

Cap

To address, at least in part, the incentive problems discussed above with respect to a purely issuer-specific determination, the Board proposes to place a ceiling on the amount of any issuer-specific determination by specifying a cap of 12 cents per transaction. With an issuer-specific determination and a cap, the Board would deem any interchange fee that was equal to an issuer's allowable costs to be reasonable and proportional to the issuer's costs if it is at or below the cap.

Some issuers that are subject to the interchange fee limitations have debit card programs with substantially higher per-transaction costs than others. These unusually high costs might be due to small programs targeted at high-net-worth customers or newer start-up programs that have not yet achieved economies of scale. In comparing reported per-transaction costs to current interchange transaction fee levels, the Board believes it is unlikely that these issuers currently are recovering their per-transaction costs through interchange transaction fees. The Board does not believe it is reasonable for the interchange fee to compensate an issuer for very high per-transaction costs. The Board believes that setting the cap at 12 cents per transaction will be sufficient to allow all but the highest-cost issuers discussed above to recover through interchange transaction fees the costs incurred for authorizing, clearing, and settling electronic debit transactions. The Board notes that even the highest-cost issuers have sources of revenue in addition to interchange fees, such as cardholder fees, to help cover their costs.

A cap would eliminate some of the negative incentives of a purely issuer-specific determination. An issuer with costs above the cap would not receive interchange fees to cover those higher costs. As a result, a high-cost issuer would have an incentive to reduce its costs in order to avoid this penalty. The Board would re-examine the cap periodically (to coincide with the reporting requirements in proposed § 235.8) to ensure that the cap continues to reflect a reasonable fee.

To determine an appropriate value for a cap, the Board used data from responses to the card issuer survey described earlier. The Board used data on transaction volumes and the variable cost of authorization, clearing, and settlement (the allowable costs under an issuer-specific determination) to compute an issuer's per-transaction cost. These data were used to compute various summary measures of per-transaction variable costs for issuers, generally. For this sample of issuers, the Board estimated that the per-transaction variable costs, averaged across all issuers, were approximately 13 cents per transaction. Average per-transaction variable costs were approximately 4 cents per transaction when each issuer's costs are weighted by the number of its transactions.[59] The 50th percentile of estimated per-transaction variable costs was approximately 7 cents.

The Board proposes a cap of 12 cents per transaction because, while it significantly reduces interchange fees from current levels (approximately 44 cents per transaction, on average, based on the survey of payment card networks), it allows for the recovery of per-transaction variable costs for a large majority of covered issuers (approximately 80 percent). The proposed cap does not differentiate between different types of electronic debit transactions (*e.g.,* signature-based, PIN-based, or prepaid). From the survey results, the Board found some evidence of differences in allowable costs across signature and PIN debit transactions. In particular, the mean and median values of allowable costs for signature debit transactions were approximately 2 cents higher per transaction than the analogous figures for PIN debit transactions, while the 80th percentile was approximately 1 cent higher per transaction for signature debit transactions. However, because these estimates are based on a sample of data, and because the variation among the individual issuers' costs was large, the ability to reliably infer a statistically significant difference from the data is limited. As a result, the Board does not propose to distinguish initially between the cap value for signature and PIN debit transactions, for either Alternative 1 or Alternative 2. For the same reasons, as described below, the Board does not propose to allow the safe harbor value to vary initially by authorization method. The Board requests comment on whether it should allow for such differences in the cap or safe harbor values.

The Board notes that issuers reported higher costs for authorizing, clearing, and settling prepaid card transactions

[58] Joskow, Paul L. (2008), "Incentive Regulation and its Application to Electricity Networks," *Review of Network Economics,* Vol. 7, Issue 4, pp. 547–60. Kahn, Alfred E. (1988), *The Economics of Regulation: Principles and Institutions,* Cambridge: MIT Press.

[59] This value corresponds to the aggregate per-transaction cost for all covered issuers.

(many of which are likely to be exempt from the interchange fee restrictions). The Board believes that issuers reported higher prepaid costs for one or more of the following reasons. First, many prepaid programs use stand-alone components, such as processing infrastructure, that are unable to exploit economies of scale that result from a large number of prepaid transactions or other debit card transactions. Second, because of the stand-alone components, all costs are allocated to prepaid card programs. Third, many prepaid issuers outsource almost all prepaid activity to third-party processors that include fixed costs and a mark-up in per-transaction fees. Finally, the cost data reported to the Board include information for both non-exempt and exempt cards. Exempt cards may have higher costs than non-exempt cards due to differences in the functionality of exempt cards, such as the need to verify the eligibility of transactions under certain government benefits programs. In light of the higher reported prepaid card costs, the Board specifically requests comment on whether the Board should initially have separate standards for debit card transactions and prepaid card transactions, and what those different standards should be.[60]

Safe Harbor

To further address the incentive and administrative burden problems discussed above, the Board proposes to provide a safe harbor for issuers as an alternative to the issuer-specific determination. Alternative 1 provides that, regardless of an issuer's per-transaction allowable cost, an interchange fee that is less than or equal to 7 cents per transaction is deemed to be reasonable and proportional to the issuer's cost of the electronic debit transaction. Thus, issuers would have an incentive to reduce their per-transaction costs below the safe harbor.

In determining the proposed safe harbor amount, the Board considered allowable issuer costs identified in responses to its card issuer survey. Using the issuer cost data described above, the Board proposes that 7 cents per transaction is an appropriate safe harbor value for the interchange fee. This value represents the approximate median in the distribution of estimated per-transaction variable costs. Like the cap discussed above, the Board proposes one safe harbor for all electronic debit transactions *(i.e.*, signature, PIN and prepaid). The Board recognizes that issuers' costs may change over time, and the Board proposes to re-examine the safe harbor amount periodically in light of changing issuer costs.

Overall, this approach reduces administrative burden on those issuers that choose to rely on the safe harbor, rather than determine their allowable costs, and allows issuers with costs above the safe harbor to receive an interchange fee directly linked to their costs, up to the level of the cap. At the same time, for an issuer with costs below the safe harbor value, this approach provides a reward for efficient production while also encouraging cost reductions to maximize the spread between the issuer's costs and the safe harbor value.

2. Alternative 2—Stand-Alone Cap

Under Alternative 2, the Board would use information about issuer costs to determine an appropriate maximum interchange fee, or a cap, that would apply uniformly to all issuers. That is, each issuer could receive interchange fees up to the cap, regardless of that specific issuer's actual allowable costs. Alternative 2 provides that an interchange transaction fee is reasonable and proportional to an issuer's cost only if it is no more than 12 cents per transaction. As in Alternative 1, a network would be permitted to set fees that vary with the value of the transaction (*ad valorem* fees) or with the type of transaction or type of merchant, but only such that the maximum amount of the interchange fee for any transaction was not more than the cap of 12 cents. The Board proposes the same cap of 12 cents per transaction in Alternative 2 as in Alternative 1 for the reasons stated in the discussion of Alternative 1. Each issuer's supervisor would verify that an issuer does not receive interchange revenue in excess of the cap. The Board recognizes that issuers' costs may change over time, and the Board proposes to conduct periodic surveys of covered issuers and re-examine the cap amount periodically in light of changing issuer costs.

As in Alternative 1, a stand-alone cap would encourage high-cost issuers to reduce their costs. In addition, an issuer with costs below the cap would receive a markup reflecting the spread between its costs and the cap value. Because the magnitude of the spread increases with the difference between the issuer's costs and the cap, all issuers, including low-cost issuers, would have an incentive to improve the efficiency of their operations. Finally, a cap reduces somewhat the incentive for an issuer to inflate its reported costs because no issuer would receive direct compensation for higher costs. These incentives have motivated authorities in other contexts to set price caps in many regulated industries, including, for example, the Reserve Bank of Australia in its intervention in the Australian credit and debit card markets.

In comparison to Alternative 1, administration and implementation of this approach places less administrative burden on industry participants. Although the issuer would have to report its costs to the Board every two years in accordance with § 235.8, an issuer would not have to calculate or report to the networks its maximum allowable interchange transaction fee. Similarly, a payment card network would not need to incorporate issuer-specific fees into its fee schedule, as the cap would apply uniformly to all covered issuers in that network.

3. Application of the Interchange Fee Standard

Under both Alternative 1 and Alternative 2, the limitations on interchange fees would apply on a per-transaction basis. Under both alternatives, no electronic debit transaction presented to an issuer could carry an interchange fee that exceeds the interchange fee standard for that issuer.[61] As noted above, supervisory review would be necessary to verify that an issuer does not receive interchange fee payments in excess of the maximum permitted by the rule.

This approach generally follows the statutory provisions discussed above that refer to "the" issuer and "the" transaction. The Board recognizes, however, that this approach restricts flexibility in setting interchange fees to reflect differences in risk, among other things. If the interchange fee standard must hold strictly for all transactions, then an issuer would be unable to receive a higher interchange fee for relatively high-risk transactions offset by lower interchange fees on relatively low-risk transactions.

The Board has identified two other potential methods for implementing the interchange fee standards and requests comment on each. The first approach would allow flexibility in interchange fees with respect to a particular issuer. Under this approach, the issuer could comply with the rule as long as it meets the interchange fee standard, on average, for all of its electronic debit

[60] The Board notes that prepaid cards do not currently have different interchange fees than other debit cards despite any potential differences in costs across the two types of cards.

[61] In no case does the standard prevent a network from setting interchange fees *below* the established amount. Instead, the standard describes the maximum appropriate interchange fee.

transactions over a particular network during a specified period. In other words, some interchange fees above the amount of the standard would be permitted as long as those were offset by other fees below the standard. The second approach would allow an issuer to comply with the rule with respect to transactions received over a particular network as long as, on average, over a specified period, all covered issuers on that network meet the fee standard given the network's mix of transactions. In other words, compliance with the interchange fee standard would be evaluated at the network level, rather than at the level of each individual issuer.

Both of these approaches would provide flexibility in setting interchange fees to incorporate considerations such as differences in risk across transactions. However, both of these approaches would introduce the possibility that any particular set of fees, set *ex ante* given assumptions about an issuer's or a network's expected mix of transactions, would result in an average fee for the actual transactions experienced that exceeded the regulatory standard. Moreover, network and issuer efforts to manage transactions and fees to stay within established limits could become very complex. Therefore, if the Board were to adopt either of these approaches, it may also need to deem an issuer to be in compliance with the standard as long as the interchange fees were set based on the issuer's or the network's transaction mix over a previous, designated, period of time, regardless of the actual transaction experience during the time period the fee is in effect.

The Board requests comment on whether either of these approaches is appropriate. If so, the Board requests comment about whether and how it should adopt standards with respect to a permissible amount of variation from the benchmark for any given interchange transaction fee.

4. Proposed Regulatory Language

Proposed § 235.3(a) restates the statutory requirement that the amount of any interchange transaction an issuer charges or receives with respect to a transaction must be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Proposed § 235.3(a) is the same for both Alternatives 1 and 2.

Alternative 1. Alternative 1 is contained in proposed §§ 235.3(b) through (e) of the alternative.

Interchange fee determination. Proposed § 235.3(b) sets forth the exclusive standards for determining whether the amount of any interchange fee is reasonable and proportional to the issuer's cost. Proposed § 235.3(b) sets the safe harbor amount and the issuer-specific approach, up to the cap, described above. Except during the transition period, the amount of any interchange fee must comply with the standards from October 1 of any given calendar year through September 30 of the following calendar year. *See* proposed comments 3(b)–1 through –4.

Proposed § 235.3(c) sets forth an exclusive list of allowable costs for purposes of the issuer-specific approach. Specifically, as discussed above, an issuer may include only those costs that are attributable to the issuer's role in authorization, clearance, and settlement of the transaction. Proposed § 235.3(c)(1) describes activities that comprise the issuer's role in authorization, clearance, and settlement and limits the types of costs that may be included to those that vary with the number of transactions sent to the issuer. Proposed § 235.3(c)(2) specifies that fees charged by a payment card network with respect to an electronic debit transaction are not included in the allowable costs. *See also* proposed comment 3(c)–1.

Proposed comment 3(c)–2 describes in more detail the issuer's role in authorization, clearance, and settlement of a transaction. Proposed comment 3(c)–2 also specifies the types of costs that an issuer is considered to incur for authorization, clearance, and settlement of a transaction. With respect to authorization, an issuer may include the costs of activities such as data processing, voice authorization inquiries and referral requests. *See* proposed comment 3(c)–2.i. With respect to clearance, proposed comments 3(c)–2.ii and 3(c)–2.iii clarify that an issuer's costs for clearance of routine and non-routine transactions include costs of data processing, to the extent the issuer incurs additional such costs for clearance. An issuer's clearance costs also include the costs of reconciling clearing message information, initiating the chargeback message, and data processing and reconciliation expenses specific to receiving representments and error adjustments. Finally, with respect to settlement, an issuer may include costs of interbank settlement through a net settlement service, ACH, or Fedwire® and the cost of posting the transactions to the cardholders' accounts. *See* proposed comment 3(c)–2.iv.

Proposed § 235.3(c)(1) limits allowable costs to those that vary with the number of electronic debit transactions sent to the issuer during a calendar year. Proposed comment 3(c)–3.i describes, and provides examples of, the distinction between allowable, variable costs (those costs that vary, up to existing capacity limits, with the number of transactions sent to the issuer over the calendar year) and unallowable, fixed costs (those costs that do not vary, up to existing capacity limits, with the number of transactions sent to the issuer over the calendar year).

Proposed § 235.3(c)(2) states that allowable costs do not include the fees an issuer pays to a network for processing transactions. Proposed comment 3(c)–3.ii clarifies that switch fees are an example of fees that are not an allowable cost. Proposed comment 3(c)–3.ii further explains that fees an issuer pays to a network when the network acts as the issuer's third-party processor are allowable costs.

As clarified in proposed comment 3(c)–3–iii, an issuer would not be permitted to include costs that are common to other products offered by the issuer, except insofar as those costs are allowable costs that are shared with other payment card products and vary with the number of debit transactions. Proposed comment 3(c)–3–iv clarifies that proposed § 235.3(c) sets forth an exhaustive list of allowable costs, and provides examples of costs that may not be included, such as the costs of rewards programs. The Board requests comment on whether additional clarification of allowable costs is needed.

Disclosure to payment card network. Each issuer must ensure that it is in compliance with proposed § 235.3(a) by receiving or charging interchange transaction fees at or below the safe harbor amount or as determined by its allowable costs up to the cap. Because payment card networks, not issuers, establish interchange fees, issuers must provide networks with information sufficient to ensure the issuers' compliance. Proposed § 235.3(d) requires an issuer to report the maximum amount of an interchange transaction fee it may receive or charge to a network, but only if the issuer will be receiving or charging an interchange fee above the safe harbor amount.

In establishing the conditions for reporting, the Board recognizes that not all networks likely will establish individualized interchange transaction fees. If a network does not establish individualized interchange transaction fees above the safe harbor amount, the Board believes it is not necessary to require an issuer to report its maximum allowable interchange transaction fee to networks through which it receives

electronic debit transactions. *See* proposed comment 3(d)–1. The Board requests comment on whether this reporting requirement is necessary to enable networks to set issuer-specific interchange fees.

The Board proposes that an issuer report its maximum allowable interchange fee to each payment card network through which it processes transactions by March 31 of each year (based on the costs of the previous calendar year) to ensure compliance with the standard beginning on October 1 of that same year. *See* proposed comment 3(d)–2. The Board specifically requests comment on whether prescribing the deadline by rule is necessary. If necessary, the Board requests comment on whether March 31 is an appropriate deadline or whether a different deadline is appropriate.

Transition period. As noted above, the Board is proposing to allow three months after year-end for an issuer to determine and report its maximum allowable interchange transaction fee, if its payment card networks establish individualized interchange fees above the safe harbor amount. The new interchange fee standards will be effective July 21, 2011, and are proposed to be based on 2009 costs. The Board believes that establishing new interchange fees based on calendar year 2010 costs on September 30, 2011 (approximately two months after the effective date) will impose an unnecessary burden on issuers, payment card networks, and acquirers. Accordingly, the Board proposes to allow issuers to rely on calendar year 2009 costs until September 30, 2012. After that date, issuers must determine compliance based on calendar year 2011 costs.

Alternative 2. Alternative 2 is contained in proposed § 235.3(b). That section prohibits an issuer from receiving or charging any interchange transaction fee greater than 12 cents. *See* proposed comment 3(b)–1 under Alternative 2.

IV. Section 235.4 Adjustment for Fraud-Prevention Costs

Section 920(a)(5) of the statute provides that the Board may allow for an adjustment to the interchange fee amount received or charged by an issuer if (1) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit card transactions involving that issuer, and (2) the issuer complies with fraud-prevention standards established by the Board.[62] Those standards must be designed to ensure that any adjustment is limited to the issuer's fraud-prevention costs for electronic debit transactions; takes into account any fraud-related reimbursements received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and requires issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology.

In issuing the standards and prescribing regulations for the adjustment, the Board must consider (1) The nature, type, and occurrence of fraud in electronic debit transactions; (2) the extent to which the occurrence of fraud depends on whether the authorization in an electronic debit transaction is based on a signature, PIN, or other means; (3) the available and economical means by which fraud on electronic debit transactions may be reduced; (4) the fraud-prevention and data-security costs expended by each party involved in the electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers, and payment card networks); (5) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers, and payment card networks); (6) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and (7) such other factors as the Board considers appropriate.

For the reasons set forth below, the Board has not proposed specific regulatory provisions to implement an adjustment for fraud-prevention costs to the interchange transaction fee. The Board, however, sets forth two approaches—a technology-specific approach and a non-prescriptive approach—to designing the adjustment framework and requests comment on several questions related to these approaches. The Board plans to consider the comments in developing a specific proposal for further public comment.

A. Background and Survey Results

Although the statute authorizes the Board to allow an adjustment to an interchange fee for fraud-prevention costs, the statute does not define the term "fraud." In considering whether to allow an adjustment, the Board believes that fraud in the debit card context should be defined as the use of a debit card (or information associated with a debit card) by a person, other than the cardholder, to obtain goods, services, or cash without authority for such use.[63]

Two primary steps are involved in making fraudulent purchases using a debit card. The first is stealing the cardholder account data. The second is using the stolen card or account data to make the fraudulent transaction. A thief may steal the card or the account information in several ways. For example, a card may be lost or stolen, and a thief may simply use the card to make purchases. Alternatively, a thief could obtain card account data by breaching the data-security systems of any entity that maintains records of debit card data. A thief might use the card account data to create a counterfeit card. The stolen card or account data may also be used to make unauthorized card-not-present transactions via the Internet, phone, or mail-order purchases.

As part of its survey of debit card issuers, payment card networks, and merchant acquirers, the Board gathered information about the nature, type, and occurrence of fraud in electronic debit transactions at the point of sale, and the losses due to fraudulent transactions absorbed by parties involved in such transactions.[64] Respondents were asked to report this information separately for signature and PIN debit card programs.[65] From the surveys, the Board estimates that industry-wide fraud losses to all parties of a debit card transaction were approximately $1.36 billion in 2009.[66] About $1.15 billion of these losses arose from signature debit

[62] In describing Section 1075 of the Dodd-Frank Act, Senator Durbin stated: "Further, any fraud prevention cost adjustment would be made on an issuer-specific basis, as each issuer must individually demonstrates that it complies with the standards established by the Board, and as the adjustment would be limited to what is reasonably necessary to make allowance for fraud-prevention costs incurred by that particular issuer." 156 Cong. Rec. S5925 (July 15, 2010).

[63] This definition derives from the EFTA's definition of "unauthorized electronic fund transfer." 15 U.S.C. 1693a(11).

[64] Respondents were not asked to provide data on ATM fraud.

[65] For more information, see the previous discussion regarding the survey process.

[66] Industry-wide fraud losses were extrapolated from data reported in the issuer and network surveys. Of the 89 issuers who responded to the issuer survey, 38 issuers provided data on total fraud losses related to their electronic debit card transactions. These issuers reported $719 million in total fraud losses to all parties of card transactions and represented 53 percent of the total transactions reported by networks.

card transactions and about $200 million arose from PIN debit card transactions.[67]

The surveys also solicited information about respondents' fraud-prevention and data-security activities and the costs of these activities. The surveys did not capture analogous activities and costs for merchants (or cardholders). The data presented below derive from the survey of debit card issuers, which has the most complete information about fraud losses.[68] The data are estimates given the variability in reporting across issuers about fraud types, associated fraud losses, and fraud-prevention and data-security activities and costs.

Issuers that provided data on total fraud losses relating to their electronic debit card transactions reported $719 million in total debit card fraud losses to all parties, averaging 0.041 percent of transaction volume and 9.4 basis points of transaction value. These fraud losses were generally associated with 10 different types of fraud. The most commonly reported fraud types were counterfeit card fraud, lost and stolen card fraud, and card-not-present fraud.

Issuers reported that total signature and PIN debit card fraud losses to all parties averaged 13.1 and 3.5 basis points, respectively. This represents, on a per-dollar basis, signature debit fraud losses 3.75 times PIN-debit fraud losses. These different fraud rates reflect, in part, differences in the ease of fraud associated with the two authorization methods. A signature debit card transaction requires information that is typically contained on the card itself in order for card and cardholder authentication to take place. Therefore, a thief only needs to steal information on the card in order to commit fraud.[69] In contrast, a PIN debit card transaction requires not only information contained on the card itself, but also something only the cardholder should know, namely the PIN. In this case, a thief needs both the information on the card and the cardholder's PIN to commit fraud.

Signature debit card transactions exhibit a higher fraud rate than that of PIN debit card transactions. Debit cards used to make purchases over the Internet and in other card-not-present environments are routed almost exclusively over signature debit card networks.[70] Although card-not-present transactions have a higher fraud rate than card-present transactions, the average signature debit fraud loss for card-present transactions is nonetheless more than 4 times that for PIN debit transactions.[71]

In terms of losses to the various parties in a transaction, almost all of the reported fraud losses associated with debit card transactions fall on the issuers and merchants. In particular, across all types of transactions, 57 percent of reported fraud losses were borne by issuers and 43 percent were borne by merchants. In contrast, most issuers reported that they offer zero or very limited liability to cardholders, in addition to regulatory protections already afforded to consumers, such that the fraud loss borne by cardholders is negligible.[72] Payment card networks and merchant acquirers also reported very limited fraud losses for themselves.

The distribution of fraud losses between issuers and merchants depends, in part, on the authorization method used in a debit card transaction. Issuers and payment card networks reported that nearly all the fraud losses associated with PIN debit card transactions (96 percent) were borne by issuers. In contrast, reported fraud losses were distributed much more evenly between issuers and merchants for signature debit card transactions. Specifically, issuers and merchants bore 55 percent and 45 percent of signature debit fraud losses, respectively.

In general, merchants are subject to greater liability for fraud in card-not-present transactions than in card-present transactions. As noted above, signature-based authorization is currently the primary means to perform such transactions. According to the survey data, merchants assume approximately 76 percent of signature debit card fraud for card-not-present transactions.

Based on the card issuer survey data, issuers engage in a variety of fraud-prevention activities. Issuers identified approximately 130 fraud-prevention activities and reported the costs associated with these activities as they relate to debit card transactions.[73] Some of these activities were broadly related to fraud detection and included activities such as transaction monitoring and fraud risk scoring systems that may trigger an alert or call to the cardholder in order to confirm the legitimacy of a transaction. Issuers also reported a number of fraud mitigation activities, such as merchant-blocking and account-blocking. Some issuers included costs related to customer servicing associated with fraudulent transactions and personnel costs for fraud investigation teams or other staffing costs. When all fraud-prevention activities reported by issuers are included, the overall amount spent by respondents was approximately 1.6 cents per transaction, which also corresponds to the median amount spent by those firms.

The survey also asked issuers to report their data-security activities and costs. Issuers identified approximately 50 data-security activities and reported the allocated costs to debit card programs.[74] Many of these activities were associated with information and system security. For all data-security costs reported by issuers in the card issuer survey, the overall amount spent by respondents was approximately 0.2 cents per transaction, which corresponds to the median amount spent by those firms.[75]

Merchants also have fraud-prevention and data-security costs, including costs related to compliance with payment card industry data-security standards (PCI–DSS) and other tools to prevent fraud, such as address verification services or internally developed fraud screening models, particularly for card-not-present transactions.[76] The Board's

[67] The higher losses for signature debit card transactions result from both a higher rate of fraud and higher transaction volume for signature debit card transactions.

[68] Networks' information regarding fraud losses may not be as complete as that of issuers because fraud losses absorbed by the issuers would generally not flow through the networks as chargebacks and may not be fully reported to the networks. Acquirers would generally not have knowledge about issuer losses.

[69] Among other things, information on the card includes the card number, the cardholder's name, and the cardholder's signature.

[70] Although some recent innovations attempt to facilitate PIN entry for Internet transactions, use of these technologies is still very limited.

[71] This comparison is based on survey responses from those issuers that differentiated card-present and card-not-present fraud losses for both signature and PIN transactions. These respondents represent about half of the transaction volume reported by all issuer respondents. The ratio of card-present fraud losses for signature and PIN debit networks is not comparable to the ratio of total fraud losses noted above because they are based on different subsets of issuer respondents.

[72] The EFTA limits consumer liability for unauthorized electronic fund transfers. *See* 15 U.S.C. 1693g and 12 CFR 205.6.

[73] The Board does not believe that the issuers participated in 130 unique fraud-prevention activities. Rather, the Board believes that the listed activities refer to many of the same activities under differing descriptions.

[74] Similar to the fraud-prevention information, the Board does not believe that issuers engaged in a total of 50 unique activities.

[75] On average, by transaction type, issuers incurred 2.2¢ per signature-debit transaction for fraud-prevention and data-security activities and 1.2¢ per PIN-debit transaction. Similarly, networks incurred 0.7¢ per signature-debit transaction for fraud-prevention and data-security activities and 0.6¢ per PIN-debit transaction. Finally, acquirers incurred 0.4¢ per signature-debit transaction for fraud-prevention and data-security activities and 0.3¢ per PIN-debit transaction.

[76] The Payments Cards Industry (PCI) Security Standards Council was founded in 2006 by five

Continued

surveys were not comprehensive enough to adequately capture merchant activities nor did they provide a way to determine whether issuers' fraud-prevention and data-security activities directly benefit merchants by reducing their debit card fraud losses.

B. Board's Consideration of an Adjustment for Fraud-Prevention Costs

As previously described, issuers, merchant acquirers, and networks listed a variety of fraud-prevention and data-security activities in their survey responses. In designing an adjustment framework for fraud-prevention costs, the Board is considering how an adjustment should be implemented, what fraud-prevention costs such an adjustment should cover, and what standards the Board should prescribe for issuers to meet as a condition of receiving the adjustment.

Technology-specific approach. One approach to an adjustment for fraud-prevention costs would be to allow issuers to recover costs incurred for implementing major innovations that would likely result in substantial reductions in fraud losses. This approach would establish technology-specific standards that an issuer must meet to be eligible to receive the adjustment to the interchange fee. Under this approach, the Board would identify the paradigm-shifting technology(ies) that would reduce debit card fraud in a cost-effective manner. The adjustment would be set to reimburse the issuer for some or all of the costs associated with implementing the new technology, perhaps up to a cap; therefore, covered issuers and the Board would need to estimate the costs of implementing the new technology in order to set the adjustment correctly. Industry representatives have highlighted several fraud-prevention technologies or activities, such as end-to-end encryption, tokenization, chip and PIN, and the use of dynamic data that they believe have the potential to substantially reduce fraud losses. These technologies are not broadly used in the United States at this time.[77]

This approach to implementing the adjustment has the potential to spur implementation of major security enhancements in the debit card market that have not yet gained substantial market adoption. Specifically, the adjustment could serve as an incentive for debit card industry participants to coordinate in the adoption of technologies that the Board determines would be effective in reducing fraud losses. The drawback of adopting technology-specific standards is the risk that it would cause issuers to under-invest in other innovative new technologies, not included in the Board's standards, that may be more effective and less costly than those identified in the standards.

Non-prescriptive approach. An alternative approach is to establish a more general standard that an issuer must meet to be eligible to receive an adjustment for fraud-prevention costs. Such a standard could require issuers to take steps reasonably necessary to maintain an effective fraud-prevention program but not prescribe specific technologies that must be employed as part of the program.[78] This approach would ensure that the Board's standards give flexibility in responding to emerging and changing fraud risks.

Under this approach, the adjustment would be set to reimburse the issuer for some or all of the costs of its current fraud-prevention and data-security activities and of research and development for new fraud-prevention techniques, perhaps up to a cap. This approach would shift some or all of the issuers' ongoing fraud-prevention costs to merchants, even though many merchants already bear substantial card-related fraud-prevention costs, particularly for signature debit transactions.[79] Such a shift in cost provides issuers with additional incentives to invest in fraud-prevention measures. Financial institutions make investments today, however, to reduce the risk of fraud in non-card forms of payment, without reimbursement of those costs from the counterparty to the payment.

Request for Comment

The Board requests comment on how to implement an adjustment to interchange fees for fraud-prevention costs. In particular, the Board is interested in commenters' input on the following questions:

1. Should the Board adopt technology-specific standards or non-prescriptive standards that an issuer must meet in order to be eligible to receive an adjustment to its interchange fee? What are the benefits and drawbacks of each approach? Are there other approaches to establishing the adjustment standards that the Board should consider?

2. If the Board adopts technology-specific standards, what technology or technologies should be required? What types of debit-card fraud would each technology be effective at substantially reducing? How should the Board assess the likely effectiveness of each fraud-prevention technology and its cost effectiveness? How could the standards be developed to encourage innovation in future technologies that are not specifically mentioned?

3. If the Board adopts non-prescriptive standards, how should they be set? What type of framework should be used to determine whether a fraud-prevention activity of an issuer is effective at reducing fraud and is cost-effective? Should the fraud-prevention activities that would be subject to reimbursement in the adjustment include activities that are not specific to debit-card transactions (or to card transactions more broadly)? For example, should know-your-customer due diligence performed at account opening be subject to reimbursement under the adjustment? If so, why? Are there industry-standard definitions for the types of fraud-prevention and data-security activities that could be reimbursed through the adjustment? How should the standard differ for signature- and PIN-based debit card programs?

4. Should the Board consider adopting an adjustment for fraud-prevention costs for only PIN-based debit card transactions, but not signature-based debit card transactions, at least for an initial adjustment, particularly given the lower incidence of fraud and lower chargeback rate for PIN-debit transactions? To what extent

---

card networks—Visa, Inc., MasterCard Worldwide, Discover Financial Services, American Express, and JCB International. These card brands share equally in the governance of the organization, which is responsible for the development and management of PCI Data Security Standards (PCI DSS). PCI DSS is a set of security standards that all payment system participants, including merchants and processors, are required to meet in order to participate in payment card systems.

[77] The Board understands, however, that in countries with broad chip and PIN adoption, fraud levels are not necessarily lower than those experienced in the U.S. because fraud has migrated to less secure channels, for example to Internet transactions where PIN authentication is not yet a common option.

[78] For example, Section 615(e) of the Fair Credit Reporting Act requires a number of federal agencies to develop identity theft prevention guidelines and regulations. The implementing regulations require that covered institutions adopt an identity theft prevention program designed to identify, detect, and respond to relevant identity theft red flags, but does not require consideration of specific red flags or mandate the use of specific fraud-prevention solutions. Rather, the accompanying guidelines provide factors that institutions should "consider." The supplement to the guidelines lists examples of red flags. *See e.g.,* Regulation V (Fair Credit Reporting), 12 CFR 222.90(d).

[79] An issuer's fraud losses would not be considered a cost that would be considered in setting the fraud adjustment. EFTA limits any fraud adjustment to an amount that "is reasonably necessary to make allowance for costs incurred by the issuer in *preventing* fraud in relation to electronic debit transactions * * *" EFTA Section 920(a)(5)(A)(i) (emphasis added).

would an adjustment applied to only PIN-based debit card transactions (1) satisfy the criteria set forth in the statute for establishing issuer fraud-prevention standards, and (2) give appropriate weight to the factors for consideration set forth in the statute? [80]

5. Should the adjustment include only the costs of fraud-prevention activities that benefit merchants by, for example, reducing fraud losses that would be eligible for chargeback to the merchants? If not, why should merchants bear the cost of activities that do not directly benefit them? If the adjustment were limited in this manner, is there a risk that networks would change their rules to make more types of fraudulent transactions subject to chargeback?

6. To what extent, if at all, would issuers scale back their fraud-prevention and data-security activities if the cost of those activities were not reimbursed through an adjustment to the interchange fee?

7. How should allowable costs that would be recovered through an adjustment be measured? Do covered issuers' cost accounting systems track costs at a sufficiently detailed level to determine the costs associated with individual fraud-prevention or data-security activities? How would the Board determine the allowable costs for prospective investments in major new technologies?

8. Should the Board adopt the same implementation approach for the adjustment that it adopts for the interchange fee standard, that is, either (1) an issuer-specific adjustment, with a safe harbor and cap, or (2) a cap?

9. How frequently should the Board review and update, if necessary, the adjustment standards?

10. EFTA Section 920 requires that, in setting the adjustment for fraud-prevention costs and the standards that an issuer must meet to be eligible to receive the adjustment, the Board should consider the fraud-prevention and data-security costs of each party to the transaction and the cost of fraudulent transactions absorbed by each party to the transaction. How should the Board factor these considerations into its rule? How can the Board effectively measure fraud-prevention and data-security costs of the 8 million merchants that accept debit cards in the United States?

V. Sec. 235.5 Exemptions

EFTA Section 920(a) sets forth several exemptions to the applicability of the interchange fee restriction provisions. Specifically, the statute contains exemptions for small issuers as well as government-administered payment programs and certain reloadable prepaid cards.[81] The Board proposes to implement these exemptions in § 235.5, as discussed below.

Under the proposed rule, an electronic debit transaction may qualify for more than one exemption. For example, an electronic debit transaction made using a debit card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program may be issued by an issuer that, together with its affiliates, has assets of less than $10 billion as of the end of the previous calendar year. Proposed comment 5–1 clarifies that an issuer only needs to qualify for one of the exemptions in order to exempt an electronic debit transaction from the interchange provisions in §§ 235.3, 235.4, and 235.6 of the proposed rules. The proposed comment further clarifies that a payment card network establishing interchange fees need only satisfy itself that the issuer's transactions qualify for at least one of the exemptions in order to exempt the electronic debit transaction from the interchange fee restrictions.

A. Sec. 235.5(a) Exemption for Small Issuers

Section 920(a)(6)(A) of the EFTA provides that EFTA Section 920(a) does not apply to any issuer that, together with its affiliates, has assets of less than $10 billion. For purposes of this provision, the term "issuer" is limited to the person holding the asset account that is debited through an electronic debit transaction.[82]

Proposed § 235.5(a)(1) combines the statutory language in EFTA Sections 920(a)(6)(A) and (B) to implement the exemption with some minor adjustments for clarity and consistency. Therefore, § 235.5(a)(1) provides that §§ 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer with respect to an electronic debit transaction if (i) the issuer holds the account that is debited; and (ii) the issuer, together with its affiliates, has assets of less than $10 billion as of the end of the previous calendar year. Proposed comment 5(a)–1 clarifies that an issuer would qualify for this exemption if its total worldwide banking and nonbanking assets, including assets of affiliates, are less than $10 billion.

For consistency, the proposed rule assesses an issuer's asset size for purposes of the small issuer exemption at a single point in time. Although the asset size of an issuer and its affiliates will fluctuate over time, for purposes of determining an issuer's eligibility for this exemption, the Board believes the relevant time for determining the asset size of the issuer and its affiliates for purposes of this exemption should be the end of the previous calendar year. The Board has used the calendar year-end time frame in other contexts for determining whether entities meet certain dollar thresholds.[83]

To the extent that a payment card network permits issuers meeting the small issuer exemption to receive higher interchange fees than allowed under §§ 235.3 and 235.4, payment card networks, as well as merchant acquirers and processors, may need a process in place to identify such issuers. Thus, the Board requests comment on whether the rule should establish a consistent certification process and reporting period for an issuer to notify a payment card network and other parties that the issuer qualifies for the small issuer exemption. For example, the rule could require an issuer to notify the payment card network within 90 days of the end of the preceding calendar year in order to be eligible for an exemption for the next rate period. The Board also requests comment on whether it should permit payment card networks to develop their own processes for making this determination.

B. Sec. 235.5(b) Exemption for Government-Administered Programs

Under EFTA Section 920(a)(7)(A)(i), an interchange transaction fee charged or received with respect to an electronic debit transaction made using a debit or general-use prepaid card that has been provided to a person pursuant to a

[80] Some merchant representatives have advocated that the fraud adjustment not be used to perpetuate signature-based networks, which they believe are inherently less secure than PIN networks and for which they incur significantly more chargebacks. These merchants believe that, if the Board allows a fraud adjustment, it should be designed to steer the industry from signature debit to PIN debit, or possibly to other more secure means of authorizing transactions. As noted earlier, the survey data indicate that signature debit fraud losses are higher than PIN debit fraud losses and that merchants bear a very small proportion of loss associated with PIN debit transactions.

[81] EFTA Section 920(a)(6) and (7) (15 U.S.C. 1693r(a)(6) and 7).

[82] EFTA Section 920(a)(6)(B) (15 U.S.C. 1693r(a)(6)(B)). The Board notes that an issuer of decoupled debit cards, which are debit cards where the issuer is not the institution holding the consumer's asset account from which funds are debited when the card is used, would not qualify for the exemption under EFTA Section 920(a)(6)(A) given the definition of "issuer" under EFTA Section 920(a)(6)(B), regardless of the issuer's asset size.

[83] *See, e.g.,* 12 CFR 203.2(e)(1)(i) and 12 CFR 228.20(u).

Federal, State, or local government-administered payment program is generally exempt from the interchange fee restrictions. However, the exemption applies as long as a person may only use the debit or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program. The Board proposes to implement this provision in § 235.5(b)(1) with minor non-substantive changes to the statutory language.

Proposed comment 5(b)–1 clarifies the meaning of a government-administered program. The proposed comment states that a program is considered government-administered regardless of whether a Federal, State, or local government agency operates the program or outsources some or all functions to service providers that act on behalf of the government agency. The Board understands that for many government-administered programs, the government agency outsources the administration of the card program to third parties. The proposed comment makes clear that a government-administered program will still be deemed government-administered regardless of the government agency's choice to use a third party for any and all aspects of the program.

Furthermore, proposed comment 5(b)–1 provides that a program may be government-administered even if a Federal, State, or local government agency is not the source of funds for the program it administers. For example, the Board understands that for child support programs, a Federal, State, or local government agency is not the source of funds, but such programs are nevertheless administered by State governments. As such, the Board believes that cards distributed in connection with such programs would fall under the exemption.

The Board notes that Section 1075(b) of the Dodd-Frank Act amends the Food and Nutrition Act of 2008, the Farm Security and Rural Investment Act of 2002, and the Child Nutrition of 1966 to clarify that the electronic benefit transfer or reimbursement systems established under these acts are not subject to EFTA Section 920. These amendments are consistent with the exemption under EFTA Section 920(a)(7)(i). Because proposed § 235.5(b)(1), which implements EFTA Section 920(a)(7)(i), covers these and other government-administered systems, neither the proposed regulation nor commentary specifically references such programs.

Payment card networks that allow issuers to charge higher interchange fees than permitted under §§ 235.3 and 235.4 for transactions made using a debit card that meets the exemption for government-administered payment programs will need a means to identify the card accounts that meet the exemption. As with the small issuer exemption in § 235.5(a), the Board requests comment on whether it should establish a certification process or whether it should permit payment card networks to develop their own processes.

The operational aspects of certifying on an account-by-account basis may be more complex than certifying on an issuer-by-issuer basis. Therefore, if the Board is to establish a certification process, the Board requests comment on how to structure this process, including the time periods for reporting and what information may be needed to identify accounts to which the exemption applies. For example, the Board understands that certain cards issued under a government-administered payment program may be distinguished by the BIN or BIN range.

C. Sec. 235.5(c) Exemption for Certain Reloadable Prepaid Cards

EFTA Section 920(a)(7)(A)(ii) establishes an exemption for an interchange transaction fee charged or received with respect to an electronic debit transaction for a plastic card, or other payment code or device, that is: (i) Linked to funds, monetary value, or assets purchased or loaded on a prepaid basis; (ii) not issued or approved for use to access or debit any account held by or for the benefit of the cardholder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis); (iii) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines; (iv) used to transfer or debit funds, monetary value, or other assets; and (v) reloadable and not marketed or labeled as a gift card or gift certificate.

For clarity, the proposed rule refers to "general-use prepaid card," which incorporates certain of the conditions for obtaining the exemption in EFTA Section 920(a)(7)(A)(ii). *See* proposed § 235.2(i). Proposed § 235.5(c)(1) thus implements the remaining conditions concerning the ability of the card to be used to access an account held by or for the benefit of the cardholder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis) and whether the card is reloadable and not marketed or labeled as a gift card or gift certificate.

Typically, issuers structure prepaid card programs so that the funds underlying each prepaid card in the program are held in an omnibus account, and the amount attributable to each prepaid card is tracked by establishing subaccounts or by other recordkeeping means. However, certain issuers structure prepaid card programs differently such that the funds underlying each card are attributed to separate accounts established by the issuer.

The condition in EFTA Section 920(a)(7)(A)(ii)(II) makes clear that an exempt card may not be issued or approved for use to access or debit an account held by or for the benefit of the cardholder (other than a subaccount or other method recording or tracking funds purchased or loaded on the card on a prepaid basis). Therefore, issuers that structure prepaid card programs such that the funds underlying each card are attributed to separate accounts do not qualify for the exemption based on the conditions set forth under the statute. These issuers may argue that there is little difference between their prepaid programs and others that are constructed so that the funds are part of an omnibus account. However, an argument can be made that prepaid cards that access separate accounts are not significantly different from debit cards that access demand deposit accounts, which are covered by the interchange fee restrictions in EFTA Section 920(a). The Board's proposal is based on the view that prepaid cards where the underlying funds are held in separate accounts do not qualify for the exemption.

Reloadable and Not Marketed or Labeled as a Gift Card or Gift Certificate

The Board has previously defined and clarified the meaning of "reloadable and not marketed or labeled as a gift card or gift certificate" in the context of a rule restricting the fees and expiration dates for gift cards under 12 CFR 205.20 ("Gift Card Rule"). In order to maintain consistency, the Board proposes to import commentary related to the meaning of reloadable and not marketed or labeled as a gift card or gift certificate from the Gift Card Rule.

Proposed comment 5(c)–1 provides that a general-use prepaid card is "reloadable" if the terms and conditions of the agreement permit funds to be added to the general-use prepaid card after the initial purchase or issuance. The comment further states that a general-use prepaid card is not "reloadable" merely because the issuer or processor is technically able to add functionality that would otherwise

enable the general-use prepaid card to be reloaded. The comment is similar to comment 20(b)(2)–1 under the Gift Card Rule.

Proposed comment 5(c)–2, which has been adapted from comment 20(b)(2)–2 under the Gift Card Rule, clarifies the meaning of the term "marketed or labeled as a gift card or gift certificate." The proposed comment provides that the term means directly or indirectly offering, advertising, or otherwise suggesting the potential use of a general-use prepaid card as a gift for another person. The proposed comment also states that whether the exclusion applies does not depend on the type of entity that is making the promotional message. Therefore, under the proposed comment, a general-use prepaid card is deemed to be marketed or labeled as a gift card or gift certificate if anyone (other than the consumer-purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate.[84]

The proposed comment also states that a certificate or card could be deemed to be marketed or labeled as a gift card or gift certificate even if it is primarily marketed for another purpose. Thus, for example, a reloadable network-branded card would be considered to be marketed or labeled as a gift card or gift certificate even if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as "the perfect gift" during the holiday season. Proposed comment 5(c)–2 further clarifies that the mere mention that gift cards or gift certificates are available in an advertisement or on a sign that also indicates the availability of exempted general-use prepaid cards does not by itself cause the general-use prepaid card to be marketed as a gift card or a gift certificate.

The Board also proposes examples of what the term "marketed or labeled as a gift card or gift certificate" includes and does not include in proposed comment 5(c)–3; these examples are similar to those in comment 20(b)(2)–3 under the Gift Card Rule. Thus, under the proposed comment, examples of marketing or labeling as a gift card or gift certificate include displaying the word "gift" or "present," displaying a holiday or congratulatory message, and incorporating gift-giving or celebratory imagery or motifs on the card, certificate or accompanying material, such as documentation, packaging and promotional displays. *See* proposed comment 5(c)–3.i.

The proposed comment further states that a general-use prepaid card is not marketed or labeled as a gift card or gift certificate if the issuer, seller, or other person represents that the card can be used as a substitute for a checking, savings, or deposit account, as a budgetary tool, or to cover emergency expenses. Similarly, the proposed comment provides that a card is not marketed as a gift card or gift certificate if it is promoted as a substitute for travelers checks or cash for personal use, or promoted as a means of paying for a consumer's health-related expenses. *See* proposed comment 5(c)–3.ii.

As the Board discussed in connection with the issuance of the Gift Card Rule, there are several different models for how prepaid cards may be distributed from issuers to consumers.[85] These models vary in the amount of control the issuer has in terms of how these products may be marketed to consumers. Therefore, an issuer that does not intend to market a particular general-use prepaid card as a gift card or gift certificate could find its intent thwarted by the manner in which a retailer displays the card in its retail outlets.

The Board issued comment 20(b)(2)–4 under the Gift Card Rule to address these issues. Specifically, comment 20(b)(2)–4 provides that a product is not marketed or labeled as a gift card or gift certificate if persons subject to the Gift Card Rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a card, or other payment code or device, from being marketed or labeled as a gift card or gift certificate; merchandising guidelines or plans regarding how the product must be displayed in a retail outlet; and controls to regularly monitor or otherwise verify that the card, or other payment code or device, is not being marketed as a gift card or gift certificate. The comment further states that whether a person has marketed a reloadable card, or other payment code or device, as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, or other payment code or device, is a gift card or gift certificate. The comment also included examples. The Board is proposing a similar comment 5(c)–4 to address issues related to maintaining proper policies and procedures to prevent a general-use prepaid card from being marketed as a gift card or gift certificate. Proposed comment 5(c)–4 also contains similar examples as set forth in comment 20(b)(2)–4 under the Gift Card Rule.

Proposed comment 5(c)–5 provides guidance relating to online sales of gift cards that is substantially the same as in comment 20(b)(2)–5 under the Gift Card Rule. As discussed in connection with the issuance of the Gift Card Rule, the Board believes that a Web site's display of a banner advertisement or a graphic on its home page that prominently displays "Gift Cards," "Gift Giving," or similar language without mention of other available products, or inclusion of the terms "gift card" or "gift certificate" in its web address, creates the same potential for consumer confusion as a sign stating "Gift Cards" at the top of a prepaid card display. Because a consumer acting reasonably under these circumstances may be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates, the Web site is deemed to have marketed all such products, including any general-purpose reloadable cards that may be sold on the Web site, as gift cards or gift certificates. Proposed comment 5(c)–5 provides that products sold by such Web sites would not be eligible for the exemption.

Certification

As with the exemption for government-administered payment programs, payment card networks, as well as merchant acquirers and processors, will need a process to identify accounts accessed by reloadable general-use prepaid cards that are not marketed or labeled as a gift card or gift certificate if such networks permit issuers of such accounts to charge interchange fees in excess of the amount permitted under §§ 235.3 and 235.4. The Board seeks comment on whether it should establish a certification process for the reloadable prepaid cards exemption or whether it should permit payment card networks to develop their own processes. The Board also requests comment on how it should structure the certification process if it were to establish a process, including the time

[84] As the Board discussed in connection with the issuance of the Gift Card Rule, a card is not deemed to be marketed or labeled as a gift card or gift certificate as a result of actions by the consumer-purchaser. For example, if the purchaser gives the card to another consumer as a "gift," or if the primary cardholder contacts the issuer and requests a secondary card to be given to another person for his or her use, such actions do not cause the card to be marketed as a gift card or gift certificate.

[85] *See* 75 FR 16580 at 16594 (April 1, 2010).

periods for reporting and what information may be needed to identify accounts to which the exemption applies.

Temporary Cards Issued in Connection With a General-Purpose Reloadable Card

As the Board discussed in connection with the Gift Card Rule, some general-purpose reloadable cards may be sold initially as a temporary non-reloadable card. These cards are usually marketed as an alternative to a bank account (or account substitute). After the card is purchased, the cardholder may call the issuer to register the card. Once the issuer has obtained the cardholder's personal information, a new personalized, reloadable card is sent to the cardholder to replace the temporary card.

The Board decided to permit temporary non-reloadable cards issued solely in connection with a general-purpose reloadable card to be treated as general-purpose reloadable cards under the Gift Card Rule despite the fact that such cards are not reloadable. As it discussed in connection with the Gift Card Rule, the Board was concerned that covering temporary non-reloadable cards under the Gift Card Rule would create regulatory incentives that would unduly restrict issuers' ability to address potential fraud. Some issuers issue temporary cards in non-reloadable form to encourage consumers to register the card and provide customer identification information for Bank Secrecy Act purposes. A rule that provides that the exemption is only available if the temporary card is reloadable would therefore limit issuers' options without a corresponding benefit.[86]

For similar reasons, the Board is proposing that interchange fees charged or received with respect to transactions using a temporary non-reloadable card issued solely in connection with a general-purpose reloadable card would also qualify for the exemption under EFTA Section 920(a)(7)(A)(ii), provided such cards are not marketed or labeled as a gift card or gift certificate. Therefore, proposed § 235.5(c)(2) provides that the term "reloadable" also includes a temporary non-reloadable card if it is issued solely in connection with a reloadable general-use prepaid card. Proposed comment 5(c)–6, similar to comment 20(b)(2)–6 under the Gift Card Rule, provides additional guidance regarding temporary non-reloadable cards issued solely in connection with a general-purpose reloadable card.

[86] *See* 75 FR 16580 at 16596 (April 1, 2010).

D. Sec. 235.5(d) Exception

EFTA Section 920(a)(7)(B) provides that after the end of the one-year period beginning on the effective date of the statute, the exemptions available under EFTA Sections 920(a)(7)(A)(i) and (ii) become subject to an exception. The statute provides that the exemptions are not available if any of the following fees may be charged to a person with respect to the card: (i) An overdraft fee, including a shortage of funds or a transaction processed for an amount exceeding the account balance; and (ii) a fee charged by the issuer for the first withdrawal per month from an ATM that is part of the issuer's designated ATM network. The Board proposes to implement this exception to the exemptions in § 235.5(d), substantially as presented in the statute with one minor clarification.

Specifically, the Board proposes to clarify that the fee described in § 235.5(d)(1) does not include a fee or charge charged for transferring funds from another asset account to cover a shortfall in the account accessed by the card. Such a fee is not an "overdraft" fee because the cardholder has a means of covering a shortfall in the account connected to the card with funds transferred from another asset account, and the fee is charged for making such a transfer.

VI. Sec. 235.6 Prohibition on Circumvention or Evasion

EFTA Section 920 contains two separate grants of authority to the Board to address circumvention or evasion of the restrictions on interchange transaction fees. First, EFTA Section 920(a)(8) authorizes the Board to prescribe rules to ensure that network fees are not used "to directly or indirectly compensate an issuer with respect to an electronic debit transaction" and "to circumvent or evade" the interchange transaction fee restrictions under the statute and this proposed rule.[87] In addition, EFTA Section 920(a)(1) provides the Board authority to prescribe rules to prevent other forms of circumvention or evasion. Pursuant to both of these authorities, the Board is proposing to prohibit circumvention or evasion of the interchange transaction fee restrictions in §§ 235.3 and 235.4. Circumvention or evasion would occur under the proposed rule if an issuer receives net compensation from a payment card network, not considering interchange transaction fees received from acquirers.

Payment card networks charge network participants a variety of fees in connection with electronic debit transactions. On the issuer side, fees charged by the network include access fees for connectivity and fees for authorizing, clearing, and settling debit card transactions through the network.[88] Issuers also pay fees to the network for the costs of administering the network, such as service fees for supporting the network infrastructure, and membership and licensing fees. In addition, a network may charge fees to issuers for optional services, such as for transaction routing and processing services provided by the network or its affiliates or for fraud detection and risk mitigation services.

On the acquirer and merchant side, a network similarly charges fees for accessing the network, as well as fees for authorizing, clearing, and settling debit card transactions through the network. Likewise, networks charge network administration fees, membership or merchant acceptance fees, and licensing or member registration fees on acquirers and/or merchants. There are also fees for various optional services offered by the network to acquirers or merchants, including fees for fraud detection and risk mitigation services. For a closed-loop or three-party payment network, network fees are bundled into the merchant discount rate charged by the network in its capacity as the merchant acquirer.

A fee charged by the network can be assessed as a flat fee or on a per transaction basis, and may also vary based on transaction size, transaction type or other network-established criteria. While interchange fee rates generally do not vary across issuers or acquirers for the same types of debit card transactions, fees charged by the network are often set on an issuer-by-issuer or merchant-by-merchant basis. For example, issuers and merchants may be given individualized discounts relative to a published network fee or rate based on their transaction volume increases.

In addition to discounts, issuers and merchants may receive incentive payments or rebates from a network. These incentives may include upfront payments to encourage issuers to shift some or all of their debit card volume to the network, such as signing bonuses

[87] Under EFTA Section 920(a)(1), a network fee is defined as "any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee."

[88] Network fees associated with authorizing, clearing, and settling debit card transactions are not included in the allowable costs under the interchange standard.

upon contract execution or renewal. Such payments may help issuers defray the conversion cost of issuing new cards or of marketing the network brand. In addition, issuers may receive incentive payments upon reaching or exceeding debit card transaction, percentage share, or dollar volume threshold amounts.

Discounts and incentives enable networks to compete for business among issuers and merchants. Among other things, these pricing tools help networks attract new issuers and retain existing issuers, as well as expand merchant acceptance to increase the attractiveness of the network brand. Discounts and incentives also help the network to encourage specific processing behavior, such as the use of enhanced authorization methods or the deployment of additional merchant terminals.

There are a number of factors that a network may consider in calibrating the appropriate level of network fees, discounts, and incentives in order to achieve network objectives. However, EFTA Section 920(a) authorizes the Board to prescribe rules to ensure that such pricing mechanisms are not used to circumvent or evade the interchange transaction fee restrictions. This authority is both specific with respect to the use of network fees under EFTA Section 920(a)(8), as well as general with respect to the Board's implementation of the interchange transaction fee restrictions under EFTA Section 920(a)(1).

As an initial matter, the Board notes that the statute does not directly regulate the amount of network fees that a network may charge for any of its services. Thus, the proposed rule does not seek to set or establish the level of network fees that a network may permissibly impose on any network participant for its services. Instead, the proposed rule is intended to ensure that network fees, discounts, and incentives do not, in effect, circumvent the interchange transaction fee restrictions. Accordingly, proposed § 235.6 contains a general prohibition against circumventing or evading the interchange transaction fee restrictions in §§ 235.3 and 235.4. In addition, proposed § 235.6 would expressly prohibit an issuer from receiving net compensation from a payment card network with respect to electronic debit transactions. The Board believes that such compensation would effectively serve as a transfer to issuers in excess of the amount of interchange transaction fee revenue allowed under the standards in §§ 235.3 and 235.4.

The Board also considered whether increases in fees charged by the network on merchants or acquirers coupled with corresponding decreases in fees charged by the network on issuers should also be considered circumvention or evasion of the interchange fee standards in §§ 235.3 and 235.4. For example, following the effective date of this rule, a network might increase network switch fees charged to merchants, acquirers, or processors while decreasing switch fees paid by issuers for the same types of electronic debit transactions. Under these circumstances, the increase in network processing fees charged to merchants is arguably "passed through" to issuers through corresponding decreases in processing fees paid by issuers.

The Board recognizes that such decreases in issuer fees could have the effect of offsetting reductions in interchange transaction fee revenue that will occur under the proposed restrictions in §§ 235.3 and 235.4. Nonetheless, the Board believes that such circumstances would not necessarily indicate circumvention or evasion of the interchange transaction fee restrictions because, absent net payments to the issuer from the network, an issuer would not receive net compensation from the network for electronic debit transactions. Moreover, the Board is concerned that prohibiting such shifts in the allocation of network fees would effectively lock in the current distribution of network fees between issuers and merchants, thereby constraining the ability of networks to adjust their own sources of revenue in response to changing market conditions. The Board requests comment on the proposed approach, as well as on any other approaches that may be necessary and appropriate to address concerns about circumvention or evasion of the interchange fee standards.

Proposed comment 6–1 provides that any finding of circumvention or evasion of the interchange transaction fee restrictions will depend on the relevant facts or circumstances. The proposed comment also provides an example of a circumstance indicating circumvention or evasion. In the example, circumvention or evasion occurs if the total amount of payments or incentives received by an issuer from a payment card network during a calendar year in connection with electronic debit transactions, excluding interchange transaction fees that are passed through to the issuer by the network, exceeds the total of all fees paid by the issuer to the network for electronic debit transactions during that year. In this circumstance, an issuer impermissibly receives net compensation from the payment card network in addition to the interchange transaction fees permitted under §§ 235.3 and 234.4. *See* proposed comment 6–1.i.

Proposed comment 6–1.ii clarifies that payments or incentives paid by a payment card network include, but are not limited to, marketing incentives, payments or rebates for meeting or exceeding a specific transaction volume, percentage share or dollar amount of transactions processed, or other fixed payments for debit card related activities. Payments or incentives paid by a payment card network to an issuer do not include any interchange transaction fees that are passed through to the issuer by the network. Incentives paid by a payment card network also do not include funds received by an issuer from a payment card network as a result of chargebacks or violations of network rules or requirements by a third party. The proposed comment further clarifies that fees paid by an issuer to a payment card network include, but are not limited to, network processing, or switch, fees paid for each transaction, as well as fees charged to issuers that are not particular to a transaction, such as membership or licensing fees and network administration fees. Fees paid by an issuer could also include fees for optional services provided by the network.

Proposed comment 6–2 provides examples of circumstances that do not evade or circumvent the interchange transaction fee restrictions. In the first proposed example, an issuer receives an additional incentive payment from the network as a result of increased debit card transaction volume over the network during a particular year. However, because of the additional debit card activity, the aggregate switch fees paid by the issuer to the network also increase. Assuming the total amount of fees paid by the issuer to the network continues to exceed the total amount of incentive payments received by the issuer from the network during that calendar year, no circumvention or evasion of the interchange transaction fee restrictions has occurred. *See* proposed comment 6–2.i.

In the second example, an issuer receives a rate reduction for network processing fees due to an increase in debit card transactions during a calendar year that reduces the total amount of network processing fees paid by the issuer during the year. However, the total amount of all fees paid to the network by the issuer continues to exceed the total amount of incentive payments received by the issuer from the network. Under these circumstances, the issuer does not circumvent or evade the interchange

transaction fee restrictions. *See* proposed comment 6–2.ii.

Proposed comment 6–3 clarifies that the prohibition in § 235.6 against circumventing or evading the interchange transaction fee restrictions does not apply to issuers or products that qualify for an exemption under § 235.5. Thus, for example, § 235.6 does not apply to an issuer with consolidated assets below $10 billion holding the account that is debited in an electronic debit transaction.

Comment is requested regarding how the rule should address signing bonuses that a network may provide to attract new issuers or to retain existing issuers upon the execution of a new agreement between the network and the issuer. Such bonuses arguably do not circumvent or evade the interchange transaction fee restrictions because they do not serve to compensate issuers for electronic debit transactions that have been processed over the network. Moreover, if such payments were considered in assessing whether network-provided incentives during a calendar year impermissibly exceeded the fees paid by an issuer during that year, it could constrain a network's ability to grow the network and achieve greater network efficiencies by potentially removing a significant tool for attracting new issuers. However, if such signing bonuses are not taken into account in determining whether an issuer receives net compensation for electronic debit transactions, a network could provide significant upfront incentive payments during the first year of a contract or space out incentive payments over several years to offset the limitations on interchange transaction fees that could be received by the issuer over the course of the contract.

The Board also requests comment on all aspects of the proposed prohibition against circumvention or evasion, including whether the rule should provide any additional examples to illustrate the prohibition against circumvention or evasion of the interchange transaction fee restrictions.

VII. Sec. 235.7 Limitations on Payment Card Restrictions

EFTA Section 920(b) sets forth provisions limiting the ability of issuers and payment card networks to restrict merchants and other persons from establishing the terms and conditions under which they may accept payment cards. For example, EFTA Section 920(b) prohibits an issuer or payment card network from establishing rules that prevent merchants from offering discounts based on the method of payment tendered. In addition, the statute prohibits an issuer or payment card network from establishing rules preventing merchants from setting minimum and maximum transaction amounts for accepting credit cards. These two statutory provisions are self-executing and are not subject to the Board's rulemaking authority.[89]

However, the Board is directed to prescribe implementing regulations with respect to two additional limitations set forth in the statute. First, the Board must issue rules prohibiting an issuer or payment card network from restricting the number of payment card networks on which an electronic debit transaction may be processed (network exclusivity restrictions).[90] Second, the Board must issue rules that prohibit an issuer or payment card network from directly or indirectly inhibiting any person that accepts debit cards for payment from directing the routing of an electronic debit transaction through any network that may process that transaction (merchant routing restrictions).[91] Proposed § 235.7 implements these additional limitations on payment card network restrictions.

The statutory exemptions for small issuers, government-administered payment cards, and certain reloadable prepaid cards under EFTA Section 920 apply only to the restrictions on interchange transaction fees in EFTA Section 920(a). *See* proposed § 235.5, discussed above. Thus, these exemptions do not apply to the limitations on payment card network restrictions under EFTA Section 920(b), including the prohibitions on network exclusivity arrangements and merchant routing restrictions implemented in proposed § 235.7. *See* proposed comment 7–1.

A. Sec. 235.7(a) Prohibition on Network Exclusivity

EFTA Section 920(b)(1)(A) directs the Board to prescribe rules prohibiting an issuer or a payment card network from directly or indirectly restricting, through any agent, processor, or licensed member of a payment card network, the number of payment card networks on which an electronic debit transaction may be processed to fewer than two unaffiliated payment card networks. Proposed § 235.7(a) implements the new requirement.

In recent years, payment card networks have increasingly offered issuers financial incentives in exchange for committing a substantial portion of their debit card transaction volume to the network. For example, some issuers may agree to shift some or all of their debit card transaction volume to the network in exchange for higher incentive payments (such as volume-based payments or marketing support) or volume-based discounts on network fees charged to the issuer. In many cases, issuers have agreed to make the payment card network, or affiliated networks, the exclusive network(s) associated with the issuer's debit cards. For example, some issuers have agreed to restrict their cards' signature debit functionality to a single signature debit network and PIN debit functionality to the PIN debit network that is affiliated with the signature debit network. Certain signature debit network rules also prohibit issuers of debit cards carrying the signature network brand from offering other signature debit networks or certain competing PIN debit networks on the same card. *See* proposed comments 7(a)–1 and –2 describing the terms PIN and signature debit.

Some issuers also negotiate or enroll in "exclusivity arrangements" with payment card networks for other business purposes. For example, an issuer may want to shift a substantial portion or all of its debit card volume to a particular network to reduce core processing costs through economies of scale; to control fraud and enhance data security by limiting the points for potential compromise; or to eliminate or reduce the membership and compliance costs associated with connecting to multiple networks.

From the merchant perspective, the availability of multiple card networks on a debit card is attractive because it gives merchants the flexibility to route transactions over the network that will result in the lowest cost to the merchant. This flexibility may promote direct price competition among the debit card networks that are enabled on the debit card. Thus, debit card network exclusivity arrangements limit merchants' ability to route transactions over lower-cost networks and may reduce price competition.

From the cardholder perspective, however, requiring multiple payment card networks could have adverse effects. In particular, such a requirement could limit the cardholder's ability to obtain certain card benefits. For example, a cardholder may receive zero liability protection or enhanced chargeback rights only if a transaction is carried over a specific card network. Similarly, insurance benefits for certain types of transactions or purchases or the

[89] The Board may, however, increase from $10 the minimum value amount that a merchant may set for credit card acceptance. EFTA Section 920(b)(3)(B).

[90] *See* EFTA Section 920(b)(1)(A).

[91] *See* EFTA Section 920(b)(1)(B).

ability to receive text alerts regarding possible fraudulent activity may be tied to the use of a specific network.[92] Requiring multiple unaffiliated payment card networks, coupled with a merchant's ability to route electronic debit transactions over any of the networks, could reduce the ability of a cardholder to control, and perhaps even to know, over which network a transaction would be routed. Consequently, such a requirement could reduce the likelihood that the cardholder would be able to obtain benefits that are specific to a particular card network. Moreover, it may be challenging for issuers or networks to explain to the cardholders that they will receive certain benefits only if a merchant chooses to route their transaction over that particular network.

In the proposed rule, the Board requests comment on two alternative approaches for implementing the restrictions on debit card network exclusivity. The first alternative (Alternative A) would require a debit card to have at least two unaffiliated payment card networks available for processing an electronic debit transaction. Under this alternative, an issuer could comply, for example, by having one payment card network available for signature debit transactions and a second, unaffiliated payment card network available for PIN debit transactions. The second alternative (Alternative B) would require a debit card to have at least two unaffiliated payment card networks available for processing an electronic debit transaction for each method of authorization available to the cardholder. For example, a debit card that can be used for both signature and PIN debit transactions would be required to offer at least two unaffiliated signature debit payment card networks and at least two unaffiliated PIN debit payment card networks.

Alternative A

EFTA Section 920(b)(1)(A) provides that an issuer and payment card network do not violate the prohibition against network exclusivity arrangements as long as the number of payment card networks on which an electronic debit transaction may be processed is not limited to less than two unaffiliated payment card networks. Nothing in EFTA Section 920(b)(1)(A) specifically requires that there must be two unaffiliated payment card networks available to the merchant once the method of debit card authorization has been determined. In other words, the statute does not expressly require issuers to offer multiple unaffiliated signature and multiple unaffiliated PIN debit card network choices on each card.

In addition, requiring multiple unaffiliated payment card networks on a debit card for each method of card authorization could potentially limit the development and innovation of new authorization methods. Although PIN and signature are the primary methods of debit card transaction authorization today, new authentication measures involving biometrics or other technologies may, in the future, be more effective in reducing fraud. However, an issuer may be unable to implement these new methods of card authorization if the rule requires that such transactions be capable of being processed on multiple unaffiliated networks. Moreover, the Board understands that enabling the ability to process a debit card transaction over multiple signature debit networks may not be feasible in the near term. Specifically, enabling multiple signature debit networks on a debit card could require the replacement or reprogramming of millions of merchant terminals as well as substantial changes to software and hardware for networks, issuers, acquirers, and processors in order to build the necessary systems capability to support multiple signature debit networks for a particular debit card transaction.

Finally, the Board recognizes that small debit card issuers could be disproportionately affected by a requirement to have multiple networks for each method of debit card authorization. *See* proposed comment 7(a)–7, discussed below. Alternative A would minimize the overall compliance costs for these issuers.

For these reasons, Alternative A would provide that the network exclusivity prohibition could be satisfied as long as an electronic debit transaction may be processed on at least two unaffiliated payment card networks. *See* § 235.7(a)(1) (Alternative A). Proposed comment 7(a)–3 under Alternative A clarifies that Alternative A does not require an issuer to have multiple, unaffiliated networks available for each method of cardholder authorization. Under Alternative A, it would be sufficient, for example, for an issuer to issue a debit card that operates on one signature-based card network and on one PIN-based card network, as long as the two card networks are not affiliated. Alternatively, an issuer could issue a debit card that operates on two or more unaffiliated signature-based card networks, but is not enabled for PIN debit transactions, or that operates on two or more unaffiliated PIN-based card networks, but is not enabled for signature debit transactions.

Alternative B

The Board also recognizes that the effectiveness of the rule promoting network competition could be limited in some circumstances if an issuer can satisfy the requirement simply by having one payment card network for signature debit transactions and a second unaffiliated payment card network for PIN debit transactions. In particular, the Board understands that only about 2 million of the 8 million merchant locations in the United States that accept debit cards have the capability to accept PIN debit transactions. Thus, in those locations that accept only signature debit, potentially under Alternative A only a single payment card network would be available to process electronic debit transactions.

In addition, PIN debit functionality generally is not available in certain merchant categories or for certain types of transactions. For example, the Board understands that PIN debit typically cannot be used for hotel stays or car rentals for which a merchant obtains an authorization for an estimated transaction amount, but the actual transaction amount is not known until later, when the cardholder checks out of the hotel or returns the rental car. Because PIN debit transactions are single-message transactions that combine the authorization and clearing instructions, the Board understands that it is currently not feasible to use PIN debit in circumstances where the final transaction amount differs from the authorized transaction amount. PIN debit is also not currently available for Internet purchase transactions in most cases. Thus, for these transaction types, the unavailability of PIN debit as an alternative method of authorization effectively means that only a single card network would be available to process an electronic debit transaction if Alternative A is adopted in the final rule.

Finally, the Board notes that Alternative A could limit the effectiveness of the separate prohibition on merchant routing restrictions under new EFTA Section 920(b)(1)(B), discussed below, if an issuer elected to enable only one signature debit network and one unaffiliated PIN network on a particular debit card. This is because once the cardholder has authorized the

[92] These benefits are often provided for transactions routed over signature debit networks; they are less commonly available for PIN-debit transactions.

transaction using either a signature or PIN entry, the merchant would have only a single network available for routing the transaction.

Under Alternative B, an issuer or payment card network would be prohibited from directly or indirectly restricting the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks "for each method of authorization that may be used by the cardholder." This means that an issuer would not comply with the proposed rule for a signature and PIN-enabled debit card unless there were at least two unaffiliated signature debit networks and at least two unaffiliated PIN debit networks enabled on the card.

Proposed comment 7(a)–3 under Alternative B clarifies that under this alternative, each electronic debit transaction, regardless of the method of authorization, must be able to be processed on at least two unaffiliated payment card networks. For example, if a cardholder authorizes an electronic debit transaction using a signature, that transaction must be capable of being processed on at least two unaffiliated signature-based payment card networks. Similarly, if a cardholder authorizes an electronic debit transaction using a PIN, that transaction must be capable of being processed on at least two unaffiliated PIN-based payment card networks. This comment would also clarify that the use of contactless or radio-frequency identification (RFID) technology would not constitute a separate method of authorization as the Board understands that such transactions are generally processed over either a signature debit network or a PIN debit network.

The Board requests comment on both proposed alternatives for implementing the prohibition on network exclusivity arrangements under EFTA Section 920(b)(1)(A). Comment is requested on the cost and benefits of each alternative, including for issuers, merchants, cardholders, and the payments system overall. In particular, the Board requests comment on the cost of requiring multiple payment card networks for signature-based debit card transactions, and the time frame necessary to implement such a requirement.

Proposed § 235.7(a)(2) describes three circumstances in which an issuer or payment card network would not satisfy the general requirement to have at least two unaffiliated payment networks on which an electronic debit transaction may be processed, regardless of which of the alternatives is adopted.

First, proposed § 235.7(a)(2)(i) addresses payment card networks that operate in a limited geographic acceptance area. Specifically, the proposed rule provides that adding an unaffiliated payment card network that is not accepted throughout the United States would not satisfy the requirement to have at least two unaffiliated payment card networks enabled on a debit card. For example, an issuer could not comply with the network exclusivity provision by having a second unaffiliated payment card network that is accepted in only a limited geographic region of the country. However, an issuer would be in compliance with proposed § 235.7(a)(1) if, for example, the debit card operates on one national network and multiple geographically limited networks that are unaffiliated with the first network and that, taken together, provide nationwide coverage. Proposed comment 7(a)–4.i provides an example to illustrate the provision regarding limited geographic acceptance networks. The proposed comment also clarifies that a payment card network is considered to have sufficient geographic reach even though there may be limited areas in the United States that it does not serve. For example, a national network that has no merchant acceptance in Guam or American Samoa may nonetheless meet the geographic reach requirement.

The Board requests comment on the impact of the proposed approach to networks with limited geographic acceptance on the viability of regional payment card networks, and whether other approaches may be appropriate, including, but not limited to, requiring that a particular debit card be accepted on at least two unaffiliated payment card networks (under either alternative) in States where cardholders generally use the card. If the Board permitted a regional network by itself to satisfy the requirement, what standard should be used for determining whether that network provides sufficient coverage for the issuer's cardholders' transactions? The Board also requests comment on the potential impact, and particularly the cost impact, on small issuers from adding multiple payment card networks in order to ensure that a debit card is accepted on a nationwide basis on at least two unaffiliated payment card networks.

Second, proposed § 235.7(a)(2)(ii) provides that adding an unaffiliated payment card network that is accepted only at a limited number of merchant locations or for limited merchant types or transaction types would not comply with the requirement to have at least two unaffiliated payment card networks on a debit card. For example, an issuer could not solely add as an unaffiliated payment card network, a network that is only accepted at a limited category of merchants (for example, at a particular supermarket chain or at merchants located in a particular shopping mall). *See* proposed comment 7(a)–4.ii. The Board requests comment on whether additional guidance regarding networks that have limited merchant acceptance is necessary.

Third, the proposed rule would prohibit a payment card network from restricting or otherwise limiting an issuer's ability to contract with any other payment card network that may process an electronic debit transaction involving the issuer's debit cards. *See* proposed § 235.7(a)(2)(iii). Proposed comment 7(a)–5 provides examples of prohibited restrictions on an issuer's ability to contract with other payment card networks. For example, a payment card network would be prohibited from limiting or otherwise restricting, by rule, contract, or otherwise, the other payment card networks that may be enabled on a particular debit card, such as by expressly prohibiting an issuer from offering certain specified payment card networks on the debit card or by limiting the payment card networks that may be offered on a card to specified networks. *See* proposed comment 7(a)–5.i.

Proposed § 235.7(a)(2)(iii) would also prohibit network rules or guidelines that allow only that network's (or its affiliated network's) brand, mark, or logo to be displayed on a particular debit card, or that otherwise limit the number or location of network brands, marks, or logos that may appear on the debit card. *See* proposed comment 7(a)–5.ii. Such rules or guidelines may inhibit an issuer's ability to add other payment card networks to a debit card, particularly if the other networks also require that their brand, mark, or logo appear on a debit card in order for a card to be offered on that network.

Proposed comment 7(a)–6 provides, however, that nothing in the rule requires that a debit card identify the brand, mark, or logo of each payment card network over which an electronic debit transaction may be processed. For example, a debit card that operates on two or more different unaffiliated payment card networks need not bear the brand, mark, or logo for each card network. The Board believes that this flexibility is necessary to facilitate an issuer's ability to add (or remove) payment card networks to a debit card without being required to incur the additional costs associated with the

reissuance of debit cards as networks are added (or removed).

Proposed § 235.7(a) does not expressly prohibit debit card issuers from committing to a certain volume, percentage share, or dollar amount of transactions to be processed over a particular network. However, these volume, percentage share, or dollar amount commitments could only be given effect through issuer or payment card network priorities that direct how a particular debit card transaction should be routed by a merchant. As discussed below under proposed § 235.7(b), these issuer or payment card network routing priorities would be prohibited by the proposed limitations on merchant routing restrictions. The Board requests comment on whether it is necessary to address volume, percentage share, or dollar amount requirements in the exclusivity provisions, and whether other types of arrangements should be addressed under the rule.

Proposed comment 7(a)–7 clarifies that the requirements of § 235.7(a) apply equally to voluntary arrangements in which a debit card issuer participates exclusively in a single payment card network or affiliated group of payment card networks by choice, rather than due to a specific network rule or contractual commitment. For example, although an issuer may prefer to offer a single payment card network (or the network's affiliates) on its debit cards to reduce its processing costs or for operational simplicity, the statute's exclusivity provisions do not allow that. Thus, the proposed comment clarifies that all issuers must issue cards enabled with at least two unaffiliated payment card networks, even if the issuer is not subject to any rule of, or contract, arrangement, or any other agreement with, a payment card network requiring that all or a specified minimum percentage of electronic debit transactions be processed on the network or its affiliated networks.

Proposed comment 7(a)–8 clarifies that the network exclusivity rule does not prevent an issuer from including an affiliated payment card network among the networks that may process an electronic debit transaction for a particular debit card, as long as at least two of the networks that accept the card are unaffiliated. The proposed comment under Alternative A clarifies that an issuer is permitted to offer debit cards that operate on both a signature debit network as well as an affiliated PIN debit network, as long as at least one other payment card network that is unaffiliated with either the signature or PIN debit networks also accepts the card. The Board is also proposing a corresponding comment that would apply to Alternative B.

Proposed § 235.7(a)(3) addresses circumstances where previously unaffiliated payment card networks subsequently become affiliated as a result of a merger or acquisition. Under these circumstances, an issuer that issues cards with only the two previously unaffiliated networks enabled would no longer comply with § 235.7(a)(1) until the issuer is able to add an additional unaffiliated payment card network to the debit card. The proposed rule requires issuers in these circumstances to add an additional unaffiliated debit card network no later than 90 days after the date on which the prior unaffiliated payment card networks become affiliated. The Board requests comment on whether 90 days provides sufficient time for issuers to negotiate new agreements and add connectivity with the additional networks in order to comply with the rule.

Additional Requests for Comment

The Board understands that some institutions may wish to issue a card, or other payment code or device, that meets the proposed definition of "debit card," but that may be capable of being processed using only a single authorization method. For example, a key fob or mobile phone embedded with a contactless chip may be able to be processed only as a signature debit transaction or only on certain networks. Under the proposed rule (under either alternative), the issuer would be required to add at least a second unaffiliated signature debit network to the device to comply with the requirements of § 235.7(a). The Board requests comment on whether this could inhibit the development of these devices in the future and what steps, if any, the Board should take to avoid any such impediments to innovation.

As noted above under proposed comment 7–1, the statutory exemptions for small issuers, government-administered payment cards, and certain reloadable prepaid cards do not apply to the limitations on payment card network restrictions under EFTA Section 920(b). Thus, for example, government-administered payment cards and reloadable prepaid cards, including health care and other employee benefit cards, would be subject to the prohibition on the use of exclusive networks under EFTA Section 920(b)(1). The Board understands that in many cases, issuers do not permit PIN functionality on prepaid cards in order to prevent cash access in response to potential money laundering or other regulatory concerns. In addition, in the case of debit cards issued in connection with health flexible spending accounts and health reimbursement accounts, Internal Revenue Service (IRS) rules require the use of certain sophisticated technology at the point-of-sale to ensure that the eligibility of a medical expense claim can be substantiated at the time of the transaction. However, PIN-debit networks may not currently offer the functionality or capability to support the required technology. Thus, applying the network exclusivity prohibition to these health benefit cards in particular could require an issuer or plan administrator to add a second signature debit network to comply with IRS regulations if PIN networks do not add the necessary functionality to comply with those regulations. The Board requests comment on any alternatives, consistent with EFTA Section 920, that could minimize the impact of the proposed requirements on these prepaid products.

B. Sec. 235.7(b) Prohibition on Merchant Routing Restrictions

EFTA Section 920(b)(1)(B) requires the Board to prescribe rules prohibiting an issuer or payment card network from directly or indirectly "inhibit[ing] the ability of any person that accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions." The Board is proposing to implement this restriction in § 235.7(b). Specifically, proposed § 235.7(b) would prohibit both issuers and payment card networks from inhibiting, directly, or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, a merchant's ability to route electronic debit transactions over any payment card network that may process such transactions.

In practice, this means that merchants, not issuers or networks, must be able to designate preferences for the routing of transactions, and that the merchant's preference must take priority over the issuer's or network's preference. The rules of certain PIN debit payment card networks today require merchants to route PIN debit transactions based on the card issuer's designated preferences. This is the case even where multiple PIN debit networks are available to process a particular debit card transaction. In other cases, the PIN debit network itself may require, by rule or contract, that the particular PIN debit transaction be

routed over that network when there are multiple PIN networks available.[93] Such rules or requirements prevent merchants from applying their own preferences with respect to routing the particular debit card transaction to the PIN debit network that will result in the lowest cost to the merchant. Neither of these practices would be permitted under the proposed rule.

The Board does not interpret EFTA Section 920(b)(1)(B) to grant a person that accepts debit cards the ability to process an electronic debit transaction over *any* payment card network of the person's choosing. Rather, the Board interprets the phrase "any payment card network that may process such transactions" to mean that a merchant's choice is limited to the payment card networks that have been enabled on a particular debit card. Moreover, allowing merchants to route transactions over any network, regardless of the networks enabled on the debit card, would render superfluous the requirement to have at least two unaffiliated payment cards enabled on a particular debit card. Accordingly, proposed comment 7(b)–1 clarifies that the prohibition on merchant routing restrictions applies solely to the payment card networks on which an electronic debit transaction may be processed with respect to a particular debit card.

Proposed comment 7(b)–2 provides examples of issuer or payment card network practices that would inhibit a merchant's ability to direct the routing of an electronic debit transaction in violation of § 235.7(b). Although routing generally refers to sending the transaction information to the issuer, the Board notes that the statute broadly directs the Board to prescribe the rules that prohibit issuer or payment card network practices that "inhibit" a person's ability to direct the routing of the transaction. Accordingly, the Board believes it is appropriate also to address certain practices that may affect the network choices available to the merchant at the time the transaction is processed.

The first example addresses issuer or card network rules or requirements that prohibit a merchant from "steering," or encouraging or discouraging, a cardholder's use of a particular method of debit card authorization. For example, merchants may want to encourage cardholders to authorize a debit card transaction by entering their PIN, rather than by providing a signature, if PIN debit carries a lower interchange rate than signature debit. Under proposed § 235.7(b) and comment 7(b)–2.i, merchants may not be inhibited from encouraging the use of PIN debit by, for example, setting PIN debit as a default payment method or blocking the use of signature debit altogether.

The second example of a prohibited routing restriction is network rules or issuer designated priorities that direct the processing of an electronic debit transaction over a specified payment card network or its affiliated networks. *See* proposed comment 7(b)–2.ii. Thus, for example, if multiple networks are available to process a particular debit transaction, neither the issuer nor the networks could specify the network over which a merchant would be required to route the transaction. Nothing in proposed comment 7(b)–2.ii, however, is intended to prevent an issuer or payment card network from designating a default network for routing an electronic debit transaction in the event a merchant or its acquirer or processor does not indicate a routing preference. In addition, proposed comment 7(b)–2.ii does not prohibit an issuer or payment card network from directing that an electronic debit transaction be processed over a particular network if required to do so by state law. *See, e.g.,* Iowa Code Sec. 527.5.

As noted above, if issuer- or network-directed priorities are prohibited, issuers will, as a practical matter, be unable to guarantee or otherwise agree to commit a specified volume, percentage share, or dollar amount of debit card transactions to a particular debit card network. Accordingly, the Board believes it is unnecessary to separately address volume, percentage share, or dollar amount commitments of debit card transactions as prohibited forms of network exclusivity arrangements under proposed § 235.7(a).

Under the third example, a payment card network could not require a particular method of debit card authorization based on the type of access device provided by the cardholder. *See* proposed comment 7(b)–2.iii. For example, a payment card network would be prohibited from requiring that an electronic debit transaction that is initiated using "contactless" or radio frequency identification device (RFID) technology may only be processed over a signature debit network. The Board requests comment on whether there are other circumstances that the commentary should include as examples of prohibited routing restrictions.

Although proposed § 235.7 provides merchants control over how an electronic debit transaction is routed to the issuer, the proposed rule does not impose a requirement that a merchant be able to select the payment card network over which to route or direct a particular electronic debit transaction in real time, that is, at the time of the transaction. The Board believes that requiring real-time merchant routing decision-making could be operationally infeasible and cost-prohibitive in the short term as it would require systematic programming changes and equipment upgrades. Today, for example, transaction routing is relatively straightforward once the cardholder has chosen to authorize a debit card transaction using his or her PIN. Once the PIN is entered, card information for the transaction is transmitted to the merchant's acquirer or processor and the transaction is then generally routed over a pre-determined network based upon issuer or payment network routing priorities for that card. Under proposed § 235.7(b), however, issuer and network routing priorities would no longer be permitted, except under limited circumstances. *See* proposed comment 7(b)–2.ii, discussed above. Instead, merchants would be free to make the routing decision. Although merchant-directed routing tables administered by the acquirer or processor could be somewhat more complex than issuer-directed routing tables given the larger number of merchants, such a system could still be administered in the straightforward manner they are administered today with the routing decisions determined in advance for a particular merchant. Accordingly, proposed comment 7(b)–3 provides that it is sufficient for a merchant and its acquirer or processor to agree to a pre-determined set of routing choices that apply to all electronic debit transactions that are processed by the acquirer on behalf of the merchant.

C. Effective Date

Although EFTA Section 920 requires that the restrictions on the amount of interchange transaction fees become effective on July 21, 2011, the statute does not specify an effective date for the separate provisions on network exclusivity and merchant routing restrictions. As discussed above, the new provisions provide that at least two unaffiliated payment card networks must be available for processing any electronic debit transaction, and prohibit issuers and payment card

[93] These issuer- or network-directed priority rules are generally unnecessary for signature debit networks as there is only a single payment card network available for processing a signature debit transaction.

networks from inhibiting merchants from directing how electronic debit transactions may be routed based upon the available choices. In order to implement these new requirements, certain system changes will be required. For example, before a debit card may be enabled for an additional payment card network, connectivity will have to be established with the new network and internal processing systems upgraded to support that network. In some cases, new cards may have to be issued to cardholders. Acquirers and processors will have to be notified of the new network assignments for each debit card program and their routing tables updated for each issuer and card program. Payment card networks will have to ensure that they have sufficient processing capacity to support any necessary changes.

If Alternative B is adopted in the final rule and multiple signature debit networks are required for each debit card, the Board anticipates that significantly more time will be needed to enable issuers and networks to comply with the rule. The Board requests comment on a potential effective date of October 1, 2011, for the provisions under § 235.7 if the Board were to adopt Alternative A under the network exclusivity provisions, or alternatively, an effective date of January 1, 2013 if Alternative B were adopted in the final rule.

The Board requests comment on all aspects of implementing the proposed limitations on network exclusivity and merchant routing restrictions under § 235.7, including the specific changes that will be required and the entities affected. The Board also requests comment on other, less burdensome alternatives that may be available to carry out the proposed restrictions under § 235.7 to reduce the necessary cost and implementation time period.

Sec. 235.8 Reporting Requirements

Section 920 authorizes the Board to collect from issuers and payment card networks information that is necessary to carry out the provisions of this section and requires the Board to publish, if appropriate, summary information about costs and interchange transaction fees every two years. Summary information from information collections conducted prior to this proposed rulemaking is discussed above. The Board anticipates using forms derived from the Interchange Transaction Fee Surveys (FR 3062; OMB No. 7100), but with a narrower scope, for purposes of these proposed reporting requirements.[94] At this time, however, the Board is not publishing specific forms for comment. The Board does not anticipate requiring the first report to be submitted before March 31, 2012. Prior to that time, the Board will provide an opportunity for comment on the specific reporting forms and reporting burden. The Board, however, is seeking comment on the reporting requirements as laid out generally in proposed § 235.8.

Consistent with the statutory information collection authority, the Board proposes to require issuers that are subject to §§ 235.3 and 235.4 and payment card networks to submit reports to the Board. Each entity required to submit a report would submit the form prescribed by the Board. The forms would request information regarding costs incurred with respect to electronic debit transactions, interchange transaction fees, network fees, and fraud-prevention costs. Similar to the surveys conducted in connection with this proposed rulemaking, the Board may publish summary or aggregate information.

The Board proposes that each entity would be required to report biennially, consistent with the Board's statutory publication requirement. The Board anticipates that circumstances may develop that require more frequent reporting. Accordingly, under proposed § 235.8(c), the Board reserves the discretion to require more frequent reporting.

For the years an entity is required to report, the Board proposes that such entity must submit the report to the Board by March 31 of that year. The Board believes that permitting three months following the end of the calendar-year reporting period provides a reasonable time to determine the costs that need to be reported and complete the report. The Board is requesting comment on whether the three-month time frame is appropriate.

Proposed § 235.8(e) would require entities that are required to report under this section to retain records of reports submitted to the Board for five years. Further, such entities would be required to make each report available upon request to the Board or the entity's primary supervisors. The Board believes that the record retention requirement will facilitate administrative enforcement.

[94] Copies of the survey forms are available on the Board's Web site at *http://www.federalreserve.gov/newsevents/reform_meetings.htm.*

Sec. 235.9 Administrative Enforcement

The interchange transaction fee requirements and the network exclusivity and routing rules are enforced under EFTA Section 918 (15 U.S.C. 1693o), which sets forth the administrative agencies that enforce the requirements of the EFTA. Unlike other provisions in the EFTA, the requirements of Section 920 are not subject to EFTA Section 916 (civil liability) and Section 917 (criminal liability). Further, the Dodd-Frank Act amends the current administrative enforcement provision of the EFTA. Therefore, proposed § 235.9 sets forth the administrative enforcement agencies under EFTA Section 918 as amended by the Dodd-Frank Act.

Form of Comment Letters

Comment letters should refer to Docket No. R–1404 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

Solicitation of Comments Regarding Use of "Plain Language"

Section 772 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809) requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comment on whether the proposed rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed this proposed rule under the authority delegated to the Board by the Office of Management and Budget. The Board will conduct an analysis under the Paperwork Reduction Act and seek public comment when it develops surveys to obtain information under § 235.8. Any additional burden associated with the reporting requirement in proposed § 235.3(d) (under Alternative 1) for issuers that wish to receive an interchange fee in excess of the safe harbor is considered negligible. Thus no new collections of information pursuant to the PRA are contained in the proposed rule.

Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq*. (RFA), the Board is publishing an initial regulatory flexibility analysis for the proposed new Regulation II (Debit Card Interchange Fees and Routing). The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board welcomes comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* As required by Section 920 of the EFTA (15 U.S.C. 1693r), the Board is proposing new Regulation II to establish standards for assessing whether an interchange transaction fee received or charged by an issuer (and charged to the merchant or acquirer) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Additionally, proposed new Regulation II prohibits issuers and payment card networks from both restricting the number of payment card networks over which an electronic debit transaction may be processed and inhibiting the ability of a merchant to direct the routing of an electronic debit transaction over a particular payment card network.

2. *Small entities affected by the proposal.* This proposal may have an effect predominantly on two types of small entities—financial institutions that either issue debit cards or acquire transactions from merchants and the merchants themselves. A financial institution generally is considered small if it has assets of $175 million or less.[95] Based on 2010 Call Report data, approximately 11,000 depository institutions had total domestic assets of $175 million or less. Of this number, however, it is unknown how many of these institutions issue debit cards. Whether a merchant is a small entity is determined by the asset size or the number of employees.[96] Of the 8 million merchant locations that accept debit cards, the number of merchants that are considered small entities is unknown.

3. *Compliance requirements.* With respect to the limitations on interchange transaction fees, the Board's proposed rule does not affect most such entities directly.[97] In accordance with Section 920 of the EFTA, the Board's proposed rule exempts from the limitations on interchange transaction fees all issuers that, together with affiliates, have assets of less than $10 billion. The Board's proposed rule does not require payment card networks to distinguish between issuers with assets of more than $10 billion and smaller issuers. If a payment card network decides to distinguish between large and small issuers, a payment card network may require a smaller issuer to submit information to it. The proposed rule, however, does not impose reporting requirements on smaller issuers. As discussed in other sections of the preamble, the proposed interchange transaction fee standards are expected to reduce the amount of interchange transaction fees charged to merchants and acquirers. Accordingly, the Board expects any economic impact on small merchants and acquirers to be positive.

The proposed rule prohibiting network exclusivity arrangements may affect small financial institutions that issue debit cards if such institutions do not currently comply with the Board's proposed standards. Under one alternative, a small issuer, like other issuers, would be required to have at least two unaffiliated payment card networks on each debit card it issues. If the issuer does not do so already, it would be required to add an additional network. This process may require making a decision as to which additional network to put on a card, establishing a connection to the new network, or updating internal processes and procedures. Under the second alternative, a small issuer, like all issuers, would be required to issue debit cards with at least two unaffiliated networks for each method of authorization a cardholder could select. The actions that may be necessary to add additional networks under the second alternative are the same as those under the first alternative. An issuer, however, would incur greater costs as the number of networks it adds increases. In contrast, like all merchants that accept debit cards, smaller merchants will be provided with greater routing choice. Therefore, the smaller merchants will be able to route electronic debit transactions over the lowest-cost path. Accordingly, the Board expects any economic impact on merchants to be positive.

4. *Other Federal rules.* The Board believes that no Federal rules duplicate, overlap, or conflict with proposed Regulation II.

5. *Significant alternatives to the proposed rule.* As discussed above, the Board has requested comment on the impact of the network exclusivity and routing alternatives (the provisions of the proposal that apply to small issuers) on small entities and has solicited comment on any approaches, other than the proposed alternatives, that would reduce the burden on all entities, including small issuers. The Board welcomes comment on any significant alternatives that would minimize the impact of the proposal on small entities.

List of Subjects in 12 CFR Part 235

Electronic debit transactions, interchange transaction fees, and debit card routing.

Authority and Issuance

For the reasons set forth in the preamble, the Board is proposing to add new 12 CFR part 235 to read as follows:

PART 235—DEBIT CARD INTERCHANGE FEES AND ROUTING

Sec.

235.1 Authority and purpose.
235.2 Definitions.
235.3 Reasonable and proportional interchange transaction fees.
235.4 [Reserved]
235.5 Exemptions.
235.6 Prohibition on circumvention or evasion.
235.7 Limitations on payment card restrictions.
235.8 Reporting requirements.
235.9 Administrative enforcement.

Appendix A—Official Board Commentary on Regulation II

Authority: 15 U.S.C. 1693r.

§ 235.1 Authority and purpose.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (Board) under section 920 of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693r, as added by section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010)).

(b) *Purpose.* This part implements the provisions of section 920 of the EFTA, including standards for reasonable and proportional interchange transaction fees for electronic debit transactions, exemptions from the interchange transaction fee limitations, prohibitions on evasion and circumvention,

[95] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[96] *Id.*

[97] There may be some small financial institutions that have very large affiliates such that the institution does not qualify for the small issuer exemption.

prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions, and reporting requirements for debit card issuers and payment card networks.

§ 235.2 Definitions.

(a) *Account* means a transaction, savings, or other asset account (other than an occasional or incidental credit balance in a credit plan) established for any purpose and that is located in the United States.

(b) *Acquirer* means a person that contracts directly or indirectly with a merchant to provide settlement for the merchant's electronic debit transactions over a payment card network. An acquirer does not include an institution that acts only as a processor for the services it provides to the merchant.

(c) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(d) *Cardholder* means the person to whom a debit card is issued.

(e) *Control* of a company means—

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Board determines.

(f) *Debit card.* (1) Means any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, and regardless of whether the issuer holds the account, and

(2) Includes any general-use prepaid card.

(3) The term "debit card" does not include—

(i) Any card, or other payment code or device, that is redeemable upon presentation at only a single merchant or an affiliated group of merchants for goods or services;

(ii) A check, draft, or similar paper instrument, or an electronic representation thereof; or

(iii) An account number, when used to initiate an ACH transaction to debit a person's account.

(g) *Designated automated teller machine (ATM) network* means either—

(1) All automated teller machines identified in the name of the issuer; or

(2) Any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer's customers.

(h) *Electronic debit transaction* means the use of a debit card by a person as a form of payment in the United States.

(i) *General-use prepaid card* means a card, or other payment code or device, that is—

(1) Issued on a prepaid basis, whether or not that amount may be increased or reloaded, in exchange for payment; and

(2) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(j) *Interchange transaction fee* means any fee established, charged, or received by a payment card network and paid by a merchant or acquirer for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

(k) *Issuer* means any person that issues a debit card.

(l) *Merchant* means any person that accepts debit cards as payment for goods or services.

(m) *Payment card network* means an entity that—

(1) Directly or indirectly provides the services, infrastructure, and software for authorization, clearance, and settlement of electronic debit transactions; and

(2) Establishes the standards, rules, or procedures that govern the rights and obligations of issuers and acquirers involved in processing electronic debit transactions through the network.

(n) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(o) *Processor* means a person that processes or routes electronic debit transactions for issuers, acquirers, or merchants.

(p) *United States* means the States, territories, and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 235.3 Reasonable and proportional interchange transaction fees.

(a) *In general.* The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the electronic debit transaction.

Alternative 1 (Issuer-Specific Standard With Safe Harbor and Cap):

(b) *Determination of reasonable and proportional fees.* Except as provided in paragraph (e) of this section, an issuer complies with the requirements of paragraph (a) of this section only if, during an implementation period of October 1 of any calendar year through September 30 of the following calendar year, each interchange transaction fee it receives or charges is no more than the greater of—

(1) Seven cents per transaction; or

(2) The costs described in paragraph (c) of this section incurred by the issuer with respect to electronic debit transactions during the calendar year preceding the start of the implementation period, divided by the number of electronic debit transactions on which the issuer charged or received an interchange transaction fee during that calendar year, but no higher than twelve cents per transaction.

(c) *Allowable costs.* For purposes of paragraph (b) of this section, the costs incurred by an issuer for electronic debit transactions—

(1) Are only those costs that vary with the number of transactions sent to the issuer and that are attributable to—

(i) Receiving and processing requests for authorization of electronic debit transactions;

(ii) Receiving and processing presentments and representments of electronic debit transactions;

(iii) Initiating, receiving, and processing chargebacks, adjustments, and similar transactions with respect to electronic debit transactions; and

(iv) Transmitting or receiving funds for interbank settlement of electronic debit transactions; and posting electronic debit transactions to cardholder accounts; and

(2) Do not include fees charged by a payment card network with respect to an electronic debit transaction.

(d) *Disclosure to payment card network.* If, during an implementation period of October 1 of any given calendar year through September 30 of the following calendar year, an issuer subject to this section will receive or charge an interchange transaction fee in excess of seven cents per transaction under paragraph (b)(2) of this section, the issuer must report, by March 31 of the same calendar year as the start of the implementation period, to each payment card network through which its electronic debit transactions may be routed the amount of any interchange transaction fee it may receive or charge under paragraph (b)(2).

(e) *Transition.* From July 21, 2011 through September 30, 2012, an issuer complies with the requirements of paragraph (a) of this section if any

interchange transaction fee it receives or charges is no more than the greater of—

(1) Seven cents per transaction; or

(2) The costs described in subsection (c) of this section incurred by the issuer for electronic debit transactions during the 2009 calendar year, divided by the number of electronic debit transactions on which the issuer received or charged an interchange transaction fee during the 2009 calendar year, but no higher than twelve cents per transaction.

Alternative 2 (Cap):

(b) *Determination of reasonable and proportional fees.* An issuer complies with the requirements of paragraph (a) of this section only if each interchange transaction fee received or charged by the issuer for an electronic debit transaction is no more than twelve cents per transaction.

§ 235.4 [Reserved]

§ 235.5 Exemptions.

(a) *Exemption for small issuers.* Sections 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer with respect to an electronic debit transaction if—

(1) The issuer holds the account that is debited; and

(2) The issuer, together with its affiliates, has assets of less than $10 billion as of the end of the previous calendar year.

(b) *Exemption for government-administered programs.* Except as provided in paragraph (d) of this section, §§ 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer with respect to an electronic debit transaction if—

(1) The electronic debit transaction is made using a debit card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program; and

(2) The cardholder may use the debit card only to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program.

(c) *Exemption for certain reloadable prepaid cards.* (1) *In general.* Except as provided in paragraph (d) of this section, §§ 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer with respect to an electronic debit transaction if the electronic debit transaction is made using a general-use prepaid card that is—

(i) Not issued or approved for use to access or debit any account held by or for the benefit of the cardholder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis); and

(ii) Reloadable and not marketed or labeled as a gift card or gift certificate.

(2) *Temporary cards.* For purposes of this paragraph (c), the term "reloadable" includes a temporary non-reloadable card issued solely in connection with a reloadable general-use prepaid card.

(d) *Exception.* The exemptions in paragraphs (b) and (c) of this section do not apply to any interchange transaction fee received or charged by an issuer on or after July 21, 2012 with respect to an electronic debit transaction if any of the following fees may be charged to a cardholder with respect to the card—

(1) A fee or charge for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance, unless the fee or charge is charged for transferring funds from another asset account to cover a shortfall in the account accessed by the card; or

(2) A fee charged by the issuer for the first withdrawal per calendar month from an automated teller machine that is part of the issuer's designated automated teller machine network.

§ 235.6 Prohibition on circumvention or evasion.

(a) *Prohibition on circumvention or evasion.* No person shall circumvent or evade the interchange transaction fee restrictions in §§ 235.3 and 235.4. Circumvention or evasion of the interchange fee restrictions under §§ 235.3 and 235.4 occurs if an issuer receives net compensation from a payment card network with respect to electronic debit transactions.

§ 235.7 Limitations on payment card restrictions.

(a) *Prohibition on network exclusivity.* (1) *In general.*

Alternative A: An issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks.

Alternative B: An issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks for each method of authorization that may be used by the cardholder.

(2) *Prohibited exclusivity arrangements.* For purposes of paragraph (a)(1) of this section, an issuer or payment card network does not satisfy the requirement to have at least two unaffiliated payment card networks on which an electronic debit transaction may be processed if—

(i) The unaffiliated network(s) that is added to satisfy the requirements of this paragraph does not operate throughout the United States, unless the debit card is accepted on a nationwide basis on at least two unaffiliated payment card networks when the network(s) with limited geographic acceptance is combined with one or more other unaffiliated payment card networks that also accept the card.

(ii) The unaffiliated network(s) that is added to satisfy the requirements of this paragraph is accepted only at a small number of merchant locations or at limited types of merchants; or

(iii) The payment card network restricts or otherwise limits an issuer's ability to contract with any other payment card network that may process an electronic debit transaction involving the issuer's debit cards.

(3) *Subsequent affiliation.* If unaffiliated payment card networks become affiliated as a result of a merger or acquisition such that an issuer is no longer in compliance with this paragraph (a), the issuer must add an unaffiliated payment card network through which electronic debit transactions on the relevant debit card may be processed no later than 90 days after the date on which the prior unaffiliated payment card networks become affiliated.

(b) *Prohibition on routing restrictions.* An issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

§ 235.8 Reporting requirements.

(a) *Entities required to report.* Each issuer that is not otherwise exempt from the requirements of this part under § 235.5(a) and each payment card network shall file a report with the Board in accordance with this section.

(b) *Report.* Each entity required to file a report with the Board shall submit data in a form prescribed by the Board for that entity. Data required to be

reported may include, but is not limited to, data regarding costs incurred with respect to an electronic debit transaction, interchange transaction fees, network fees, fraud-prevention and data-security costs, and fraud losses.

(c) *Timing.* (1) Each entity shall submit the data in a form prescribed by the Board biennially.

(2) Each entity shall submit the report to the Board by March 31 of the year the entity is required to report.

(3) The first report shall be submitted to the Board by March 31, 2012.

(d) *Disclosure.* The Board may, in its discretion, disclose aggregate or summary information reported under this section.

§ 235.9 Administrative enforcement.

(a)(1) Compliance with the requirements of this part shall be enforced under—

(i) Section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) National banks, federal savings associations, and federal branches and federal agencies of foreign banks;

(B) Member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal Agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act;

(C) Banks and state savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured state branches of foreign banks;

(ii) The Federal Credit Union Act (12 U.S.C. 1751 *et seq.*), by the Administrator of the National Credit Union Administration (National Credit Union Administration Board) with respect to any federal credit union;

(iii) The Federal Aviation Act of 1958 (49 U.S.C. 40101 *et seq.*), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act; and

(iv) The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

(2) The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) *Additional powers.* (1) For the purpose of the exercise by any agency referred to in paragraphs (a)(1)(i) through (iv) of this section of its power under any statute referred to in those paragraphs, a violation of this part is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to in paragraphs (a)(1)(i) through (iv) of this section, each of the agencies referred to in those paragraphs may exercise, for the purpose of enforcing compliance under this part, any other authority conferred on it by law.

(c) *Enforcement authority of Federal Trade Commission.* Except to the extent that enforcement of the requirements imposed under this title is specifically granted to another government agency under paragraphs (a)(1)(i) through (iv) of this section, and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission has the authority to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of this part shall be deemed a violation of a requirement imposed under the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements of this part, regardless of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

Appendix A—Official Board Commentary on Regulation II

Introduction

The following commentary to Regulation II (12 CFR part 235) provides background material to explain the Board's intent in adopting a particular part of the regulation. The commentary also provides examples to aid in understanding how a particular requirement is to work.

Sec. 235.2 Definitions

2(a) Account

1. *Types of accounts.* The term "account" includes accounts held by any person, including consumer accounts (*i.e.*, those established primarily for personal, family or household purposes) and business accounts. Therefore, the limitations on interchange transaction fees and the prohibitions on network exclusivity arrangements and routing restrictions apply to all electronic debit transactions, regardless of whether the transaction involves a debit card issued primarily for personal, family, or household purposes or a business-purpose debit card. For example, an issuer of a business-purpose debit card is subject to the restrictions on interchange transaction fees and is also prohibited from restricting the number of payment card networks on which an electronic debit transaction may be processed under § 235.7. The term "account" also includes bona fide trust arrangements.

2. *Account located in the United States.* This part applies only to electronic debit transactions that are initiated to debit (or credit in the case of returned goods or cancelled services) an account located in the United States. If a cardholder uses a debit card to debit an account held at a bank outside the United States, then the electronic debit transaction is not subject to this part.

2(b) Acquirer

1. *In general.* The term "acquirer" includes only the institution that contracts, directly or indirectly, with a merchant to provide settlement for the merchant's electronic debit transactions over a payment card network (referred to as acquiring the merchant's electronic debit transactions). In some acquiring relationships, an institution provides processing services to the merchant and is a licensed member of the payment card network, but does not settle the transactions with the merchant (by crediting the merchant's account) or the network. These institutions are not "acquirers" because they do not provide credit for transactions or settle to the merchant's transactions with the merchant. These institutions that only process or route transactions are considered processors for purposes of this part (*See* § 235.2(o) and commentary thereto).

2(c) Affiliate

1. *Types of entities.* The term "affiliate" includes both bank and nonbank affiliates.

2. *Other affiliates.* For commentary on whether merchants are affiliated, see comment 2(f)–5.

2(d) Cardholder

1. *Scope.* In the case of debit cards that access funds in transaction, savings, or other similar asset accounts, "the person to whom a card is issued" is the person or persons holding the account. If the account is a business account, multiple employees (or other persons associated with the business) may have debit cards that can access the account. Each employee that has a debit card that can access the account is a cardholder. In the case of a prepaid card, the cardholder generally is either the purchaser of the card or a person to whom the purchaser gave the card, such as a gift recipient.

2(e) Control [Reserved]

2(f) Debit Card

1. *Card, or other payment code or device.* The term "debit card" as defined in § 235.2(f) applies to any card, or other payment code or device, even if it is not issued in a physical form. Debit cards include, for example, an account number or code that can

be used to access underlying funds. *See,* however, § 235.2(f)(3)(iii). Similarly, the term "debit card" includes a device with a chip or other embedded mechanism that links the device to funds stored in an account, such as a mobile phone or sticker containing a contactless chip that enables an account to be debited.

2. *Deferred debit cards.* The term "debit card" includes a card, or other payment code or device, that is used in connection with deferred debit card arrangements in which transactions are not immediately posted to and funds are not debited from the underlying transaction, savings, or other asset account upon settlement of the transaction. Instead, the funds in the account are held and made unavailable for other transactions for a specified period of time. After the expiration of the applicable time period, the cardholder's account is debited for the value of all transactions made using the card that have been submitted to the issuer for settlement during that time period. For example, under some deferred debit card arrangements, the issuer may debit the consumer's account for all debit card transactions that occurred during a particular month at the end of the month. Regardless of the time period chosen by the issuer, a card, or other payment code or device, that is used in connection with a deferred debit arrangement is considered a debit card for purposes of the requirements of this part. Deferred debit card arrangements do not refer to arrangements in which a merchant defers presentment of multiple small-dollar card payments, but aggregates those payments into a single transaction for presentment, or where a merchant requests placement of a hold on funds in an account until the actual amount of the cardholder's transaction is known and submitted for settlement.

3. *Decoupled debit cards.* Decoupled debit cards are issued by an entity other than the financial institution holding the cardholder's account. In a decoupled debit arrangement, transactions that are authorized by the card issuer settle against the cardholder's account held by an entity other than the issuer via a subsequent ACH debit to that account. Because the term "debit card" applies to any card, or other payment code or device, that is issued or approved for use through a payment card network to debit an account, regardless of whether the issuer holds the account, decoupled debit cards are debit cards for purposes of this subpart.

4. *General-use prepaid card.* The term "debit card" includes general-use prepaid cards. See § 235.2(i) and related commentary for information on general-use prepaid cards.

5. *Store cards.* The term "debit card" does not include prepaid cards that may be used at a single merchant or affiliated merchants. Two or more merchants are affiliated if they are related by either common ownership or by common corporate control. For purposes of the "debit card" definition, the Board would view franchisees to be under common corporate control if they are subject to a common set of corporate policies or practices under the terms of their franchise licenses.

6. *Checks, drafts, and similar instruments.* The term "debit card" does not include a check, draft, or similar paper instrument or a transaction in which the check is used as a source of information to initiate an electronic payment. For example, if an account holder provides a check to buy goods or services and the merchant takes the account number and routing number information from the MICR line at the bottom of a check to initiate an ACH debit transfer from the cardholder's account, the check is not a debit card, and such a transaction is not considered an electronic debit transaction. Likewise, the term "debit card" does not include an electronic representation of a check, draft, or similar paper instrument.

7. *ACH transactions.* The term "debit card" does not include an account number when it is used by a person to initiate an ACH transaction that debits the person's account. For example, if an account holder buys goods or services over the Internet using an account number and routing number to initiate an ACH debit, the account number is not a debit card, and such a transaction is not considered an electronic debit transaction. However, the use of a card to purchase goods or services that debits the cardholder's account by means of a subsequent ACH debit initiated by the card issuer to the cardholder's account, as in the case of a decoupled debit card arrangement, involves the use of a debit card for purposes of this part.

2(g) Designated Automated Teller Machine (ATM) Network

1. *Reasonable and convenient access clarified.* Under § 235.2(g)(2), a designated automated teller machine network includes any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer's cardholders. An issuer provides reasonable and convenient access, for example, if, for each person to whom a card is issued, the network provides access to an automated teller machine in the network within the metropolitan statistical area of the person's last known address, or if the address is not known, where the card was first issued.

2(h) Electronic Debit Transaction

1. *Subsequent transactions.* The term "electronic debit transaction" includes both the cardholder's use of a debit card for the initial purchase of goods or services and any subsequent use by the cardholder of the debit card in connection with the initial purchase of goods or services. For example, the term "electronic debit transaction" includes using the debit card to return merchandise or cancel a service that then results in a credit to the account initially debited to pay for the merchandise or service.

2. *Cash withdrawal at the point of sale.* The term "electronic debit transaction" includes a transaction in which a cardholder uses the debit card both to purchase goods or services and to withdraw cash (known as a "cashback transaction").

3. *Geographic limitation.* This regulation applies only to electronic debit transactions that are initiated at a merchant located in the United States. If a cardholder uses a debit card at a merchant located outside the United States to debit an account held at a U.S. bank or a U.S. branch of a foreign bank, the electronic debit transaction is not subject to this part.

2(i) General-Use Prepaid Card

1. *Redeemable upon presentation at multiple, unaffiliated merchants.* A card, or other payment code or other device, is redeemable upon presentation at multiple, unaffiliated merchants if such merchants agree to honor the card, or other payment code or device, if, for example, it bears the mark, logo, or brand of a payment card network, pursuant to the rules of the payment network.

2. *Mall cards.* Mall cards that are generally intended to be used or redeemed for goods or services at participating retailers within a shopping mall are considered general-use prepaid cards if they carry the mark, logo, or brand of a payment card network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall.

2(j) Interchange Transaction Fee

1. *In general.* Generally, the payment card network is the entity that establishes and charges the interchange transaction fee to the merchants or acquirers. The merchants or acquirers then pay to the issuers any interchange transaction fee established and charged by the network. Therefore, issuers are considered to receive interchange transaction fees from merchants or acquirers.

2. *Compensating an issuer.* The term "interchange transaction fee" is limited to those fees that a payment card network establishes, charges, or receives to compensate the issuer for its role in the transaction. (*See* § 235.3(c) and commentary thereto for a description of an issuer's role in the transaction). In contrast, a payment card network may charge issuers and acquirers fees for sending transaction information to the network for clearing and settlement. Such fees are not interchange transaction fees because the payment card network is charging and receiving the fee as compensation for its role in clearing and settling.

2(k) Issuer

1. *In general.* The term "issuer" means any person that issues a debit card. The following examples illustrate the entity that is the issuer under various card program arrangements. For purposes of determining whether an issuer is exempted under § 235.5(a), however, the term issuer is limited to the entity that holds the account being debited.

2. *Four-party systems.* In a four-party system, the cardholder receives the card directly or indirectly (*e.g.,* through the bank's agent) from the account holding bank and has a direct contractual relationship with its bank with respect to the card. In this system, the cardholder's bank is the issuer.

3. *Three-party systems.* In a three-party system, the network typically provides the card, either directly or indirectly, to the cardholder and holds the cardholder's account. Accordingly, the network is also the issuer with respect to the card. In most cases, the network also has a contractual relationship with the cardholder.

4. *BIN-sponsor arrangements.* Payment card networks assign member-financial

institutions Bank Identification Numbers (BINs) for purposes of issuing cards, authorizing, clearing, settling, and other processes. In exchange for a fee or other financial considerations, some members of payment card networks permit other entities to issue debit cards using the member's BIN. The entity permitting the use of its BIN is referred to as the "BIN sponsor" and the entity that uses the BIN to issue cards is often referred to as the "affiliate member." BIN sponsor arrangements can take at least two different models:

i. *Sponsored debit card model.* In some cases, a community bank or credit union may provide debit cards to its account holders through a BIN sponsor arrangement with a member institution. In general, the bank or credit union will provide, directly or indirectly, debit cards to its account holders. The bank or credit union's name typically will appear on the debit card. The bank or credit union also holds the underlying account that is debited and has the primary relationship with the cardholder. Under these circumstances, the bank or credit union is the issuer for purposes of this part. If that affiliate member, together with its affiliates, has assets of less than $10 billion, then that bank or credit union is exempt from the interchange transaction fee restrictions. Although the bank or credit union issues cards through the BIN sponsors, the BIN sponsor does not have the direct relationship with the cardholder, and therefore is not the issuer.

ii. *Prepaid card model.* A member institution may also serve as the BIN sponsor for a prepaid card program. Under these arrangements, the BIN-sponsoring institution generally holds the funds for the prepaid card program in a pooled account, although the prepaid card program manager may keep track of the underlying funds for each individual prepaid card through subaccounts. While the cardholder may receive the card directly from the program manager or at a retailer, the cardholder's relationship is generally with the bank holding the funds in the pooled account. This bank typically is also the BIN sponsor. Accordingly, under these circumstances, the BIN sponsor, or the bank holding the pooled account, is the issuer.

5. *Decoupled debit cards.* In the case of decoupled debit cards, an entity other than the entity holding the cardholder's account directly or indirectly provides the debit card to the cardholder and has a direct relationship with the cardholder. The account-holding institution does not have a relationship with the cardholder with respect to the decoupled debit card. Under these circumstances, the entity providing the debit card, and not the account-holding institution, is considered the issuer. If the issuer of a decoupled debit card, together with its affiliates, has assets of less than $10 billion, the issuer is not exempt under § 235.5(a) because it is not the entity holding the account to be debited.

2(l) Merchant [Reserved]

2(m) Payment Card Network

1. *Scope of definition.* The term "payment card network" generally includes only those entities that establish guidelines, rules, or procedures that govern the rights and obligations of, at a minimum, issuers and acquirers involved in processing electronic debit transactions through the network. Such guidelines, rules, or procedures may also govern the rights and obligations of merchants, processors, or cardholders in addition to issuers and acquirers. The term "payment card network" includes an entity that serves in the multiple roles of payment card network and issuer and/or acquirer, such as in the case of a three-party system, to the extent that the entity's guidelines, rules, or procedures also cover its activities in its role(s) as issuer or acquirer. Acquirers, issuers, third-party processors, payment gateways, or other entities that may provide services, equipment, or software that may be used in authorizing, clearing, or settling electronic debit transactions are generally excluded from the term "payment card network," unless such entities also establish guidelines, rules, or procedures that govern the rights and obligations of issuers and acquirers involved in processing an electronic debit transaction through the network. For example, an acquirer is not considered to be a payment card network solely due to the fact that it establishes particular transaction format standards, rules, or guidelines that apply to electronic debit transactions submitted by merchants using the acquirer's services, because such standards, rules, or guidelines apply only to merchants that use its services, and not to other entities that are involved in processing those transactions, such as the card issuer.

2(n) Person [Reserved]

2(o) Processor

1. *Distinction from acquirers.* Although a processor may perform all transaction-processing functions for a merchant or acquirer, a processor is not the entity that acquires (that is, settles with the merchant for) the transactions. The entity that acquires electronic debit transactions is the entity that is responsible to other parties to the electronic debit transaction for the amount of the transaction.

2. *Issuers.* An issuer may use a third party to perform services related to authorization, clearance, and settlement of transactions. The third party is the issuer's processor.

2(p) United States [Reserved]

Sec. 235.3 Reasonable and Proportional Interchange Transaction Fees

Alternative 1 (Issuer-Specific Standard With Safe Harbor and Cap):

3(a) [Reserved]

3(b) Determination of Reasonable and Proportional Fees

1. *Two options.* An issuer may comply with § 235.3(a) in two ways: (1) an issuer may elect to receive or charge an interchange transaction fee that is no more than the amount in § 235.3(b)(1), known as the "safe harbor," or (2) an issuer may determine the maximum interchange transaction fee it may receive or charge using the cost-based approach in § 235.3(b)(2) (*See* § 235.3(c) and related commentary). An issuer complies with § 235.3(a) if it receives an interchange transaction fee in an amount at or below the safe harbor even if the maximum interchange transaction fee that the issuer is able to receive or charge under § 235.3(b)(2) is less than the safe harbor.

2. *Safe harbor.* An issuer that receives or charges interchange fees at or below the amount in § 235.3(b)(1) (known as the "safe harbor") is not required to compute an interchange fee transaction amount under § 235.3(b)(2). An issuer that receives or charges an interchange transaction fee in an amount at or below the safe harbor, however, must comply the reporting requirements in § 235.8.

3. *Cap.* An issuer that determines the maximum interchange transaction fee that it may receive or charge under the cost-based approach in § 235.3(b)(2) may not receive or charge an interchange transaction fee above the maximum amount allowable under § 235.3(b)(2), known as the "cap," even if its costs are above the cap. In contrast, if an issuer calculates that it has allowable per-transaction costs that are lower than the cap, that issuer may not receive or charge an interchange transaction fee higher than the amount determined using the formula in § 235.3(b)(2) or the safe harbor amount, whichever is greater.

4. *Variation among interchange fees.* A network is permitted to set fees that vary with the value of the transaction (*ad valorem* fees), as long as the maximum amount of the interchange fee received by an issuer for any electronic debit transaction was not more than that issuer's maximum permissible interchange fee. A network is permitted to establish different interchange fees for different types of transactions (e.g., card-present and card-not-present) or different types of merchants, as long as each of those fees satisfied the relevant limits of the standard.

3(c) Issuer Costs

1. *In general.* Section 235.3(c) sets forth the allowable costs that an issuer may include when calculating its interchange transaction fee under § 235.3(b)(2). These costs are those that are attributable to the authorization, clearance, and settlement of electronic debit transactions. Section 235.3(c)(1) further limits the costs in §§ 235.3(c)(1)(i) through (c)(1)(iv) to those that vary with the number of transactions sent to the issuer.

2. *Activities.* Section 235.3(c)(1) limits the allowable costs that an issuer may include when calculating its interchange transaction fee to the variable costs associated with its role in authorization, clearance, and settlement of electronic debit transactions.

i. *Issuer's role in authorization.* Section 235.3(c)(1)(i) describes an issuer's role in the authorization process. The authorization process begins when the cardholder presents a debit card or otherwise provides the card information to the merchant to purchase goods or services and ends when the merchant receives notice that the issuer either has approved or denied the transaction. In both four-party and three-party systems, the issuer receives the request for authorization of the electronic debit transaction. In a four-party system, the approval request is sent to the issuer via the acquirer and payment card network (and any

processors that the acquirer or issuer may use). In a three-party system, the payment card network is both the issuer and the acquirer and therefore the approval request travels through fewer parties. In both systems, the issuer decides whether to approve or deny the electronic debit transaction based on several factors, such as the availability of funds in the cardholder's account. Once the issuer approves or denies the transaction, it sends the approval or denial back through the payment card network and acquirer (and any processors) to the merchant. Section 235.3(c)(1)(i)'s authorization activities include activities such as data processing, voice authorization inquiries, and referral inquiries. An issuer generally performs separate activities with the primary purpose of fraud-prevention in connection with authorization. Those separate activities are not considered to be part of an issuer's role in authorization under § 235.3(c)(1).

ii. *Issuer's role in clearance.* Section 235.3(c)(1)(ii) describes the issuer's role in the clearance process. Clearance is the process of submitting a record of an electronic debit transaction for payment. In PIN debit (or single-message) networks, the authorization message also generally serves as the clearance of the transaction. In signature debit (or dual-message) networks, the acquirer sends the clearance message through the network to the issuer following the completion of the purchase by the cardholder, as specified in payment card network rules. Section 235.3(c)(1)(ii)'s signature-debit clearance activities include activities such as data processing and reconciling clearing message information.

iii. *Non-routine transactions.* In some instances, an issuer may decide to reverse settlement for an electronic debit transaction, pursuant to payment card network rules. This reversal is known as a "chargeback." The issuer's role in the clearance process includes the process of initiating the chargeback. After the acquirer receives a chargeback, the acquirer may decide to represent the transaction, pursuant to the network rules. The issuer's role in the clearance process also includes receiving and processing representments. Finally, after the initial clearance process, an acquirer may determine that the transaction record contained an error. For example, the transaction record may reflect an incorrect transaction amount or may be a duplicate of a previous transaction. The issuer's role in the clearance of a transaction also includes receiving and processing adjustments. Accordingly, § 235.3(c)(1)(iii)'s non-routine clearance activities include activities such as data processing to prepare and send the chargeback message through the network, and reconciliation expenses specific to receiving representments and error adjustments, such as posting a credit to a cardholder's account. An issuer's clearance costs do not include the costs of receiving cardholder inquiries about particular transactions.

iv. *Issuer's role in settlement.* Issuers have two roles in settlement of electronic debit transactions: Interbank settlement and settlement with the cardholders. Interbank settlement is the process of transferring funds between issuers and acquirers. Typically, each day a payment card network will collect all transactions sent for clearing and will determine the net amount owed by each issuer and acquirer, after deducting interchange transaction fees and other fees. The issuer (unless it is also a large merchant acquirer) will generally be in a net debit position and will transmit funds for interbank settlement. Issuers settle the electronic debit transactions with their cardholders by posting the transactions to the cardholder accounts. Section 235.3(c)(1)(iv)'s settlement costs include the fees for settlement through a net settlement service, ACH, or Fedwire®, and data processing costs for posting transactions to the cardholders' accounts.

3. *Issuer's costs.*

i. *Variable costs vs. fixed costs.* Variable costs that are attributable to authorizing, clearing, and settling electronic debit transactions can be considered in determining an issuer's permissible interchange transaction fee. For example, the portion of an issuer's data-processing costs that vary based on the number of authorization requests is a variable cost. If an issuer uses a third-party processor or other agent for all of its authorization, clearance, and settlement activities, then any per-transaction fee the third-party processor charges is a variable cost for the issuer. In contrast, fixed costs are those costs that do not vary with changes in output up to existing capacity limits within a calendar year. For example, an issuer may pay a fixed fee to connect to a network in order to process transactions. The connectivity fee is a fixed cost.

ii. *Network fees excluded.* Per-transaction fees (*e.g.,* switch fees) paid to the network in its role as network for purposes of authorization, clearance, and settlement are not an allowable cost. A payment card network may offer optional authorization, clearance, and settlement services to an issuer. In this case, although the network is charging fees to the issuer, the network is not doing so in its role as a network. Rather, these fees are considered fees an issuer pays to a processor. Therefore, fees charged by a network for its role as a third-party processor may be included in an issuer's allowable costs, provided they otherwise are permissible to include under § 235.3(c)(1).

iii. *Common costs excluded.* Common costs, which are not attributable to authorization, clearance, and settlement, are not allowable costs. For example, an issuer may not allocate a portion of its overhead costs (*e.g.,* the costs of its facilities or its human resources and legal staff) for the purpose of calculating its permissible interchange transaction fee. Similarly, the costs of operating a branch office are common to all banking activities, including the debit card program, and therefore are not allowable costs.

iv. *Costs of other activities excluded.* Section 235.3(c) sets forth an exclusive list of costs that an issuer may include when determining the amount of an interchange transaction fee it may receive or charge with respect to an electronic debit transaction. Therefore, an issuer may not include those costs that are not incurred for the activities listed in §§ 235.3(c)(1)(i) through (iv). In addition, as discussed earlier, fixed costs, even if incurred for activities related to authorization, clearance, or settlement of debit card transactions, may not be included. Fraud losses, the cost of fraud-prevention activities, and the cost of rewards programs are not includable as allowable costs.

3(d) Disclosure to payment card network

1. *No differentiation.* A payment card network may, but is not required to, differentiate among issuers subject to § 235.3 when setting interchange transaction fees. If a payment card network chooses to set the interchange transaction fee for all issuers that are subject to the interchange fee standards at or below the safe harbor amount, it is not necessary for issuers to report to the payment card network through which it receives electronic debit transactions the maximum amount of any interchange transaction fee it may receive or charge.

2. *Differentiation.* If a payment card network differentiates among issuers when setting interchange transaction fees, any issuer that is subject to the interchange fee standards receives or charges interchange transaction fees above the safe harbor must report the maximum amount of any interchange transaction fee it may receive or charge to the payment card network. An issuer must report such amount by March 31 of each calendar year for which it will be receiving an interchange transaction fee above the safe harbor (effective October 1 of the calendar year). An issuer need not submit its detailed cost information to the payment card networks.

Alternative 2 (Cap):

3(a) [Reserved]

3(b) Determining reasonable and proportional fees

1. *Variation among interchange fees.* A network is permitted to set fees that vary with the value of the transaction (*ad valorem* fees), as long as the maximum amount of the interchange fee received by an issuer for any electronic debit transaction was not more than that issuer's maximum permissible interchange fee. A network is permitted to establish different interchange fees for different types of transactions (*e.g.,* card-present and card-not-present) or types of merchants, as long as each of those fees satisfied the relevant limits of the standard.

Sec. 235.4 [Reserved]

Sec. 235.5 Exemptions for certain electronic debit transactions.

§ 235.5 In general

1. *Eligibility for multiple exemptions.* An electronic debit transaction may qualify for one or more exemptions. For example, a debit card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program may be issued by an entity that, together with its affiliates, has assets of less than $10 billion as of the end of the previous calendar year. In this case, the electronic debit transaction made using that card may qualify

for the exemption under § 235.5(a) for small issuers or for the exemption under § 235.5(b) for government-administered payment programs. A payment card network establishing interchange fees for transactions that qualify for more than one exemption need only satisfy itself that the issuer's transactions qualify for at least one of the exemptions in order to exempt the electronic debit transaction from the interchange fee restrictions.

5(a) Exemption for small issuers

1. *Asset size determination.* An issuer would qualify for the small-issuer exemption if its total worldwide banking and nonbanking assets, including assets of affiliates, are less than $10 billion.

5(b) Exemption for government-administered payment programs

1. *Government-administered payment program.* Electronic debit transactions made using a debit card issued pursuant to a government-administered payment program generally are exempt from the interchange fee restrictions. A program is considered government-administered regardless of whether a Federal, State, or local government agency operates the program or outsources some or all functions to third parties. In addition, a program may be government-administered even if a Federal, State, or local government agency is not the source of funds for the program it administers. For example, child support programs are government-administered programs even though a Federal, State, or local government agency is not the source of funds.

5(c) Exemption for certain reloadable prepaid cards

1. *Reloadable.* Electronic debit transactions made using certain reloadable general-use prepaid cards are exempt from the interchange fee restrictions. A general-use prepaid card is "reloadable" if the terms and conditions of the agreement permit funds to be added to the general-use prepaid card after the initial purchase or issuance. A general-use prepaid card is not "reloadable" merely because the issuer or processor is technically able to add functionality that would otherwise enable the general-use prepaid card to be reloaded.

2. *Marketed or labeled as a gift card or gift certificate.* Electronic debit transactions made using a reloadable general-use prepaid card are not exempt from the interchange fee restrictions if the card is marketed or labeled as a gift card or gift certificate. The term "marketed or labeled as a gift card or gift certificate" means directly or indirectly offering, advertising or otherwise suggesting the potential use of a general-use prepaid card as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A general-use prepaid card is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as "the perfect gift" during the holiday season.

The mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of exempted general-use prepaid cards does not by itself cause the general-use prepaid card to be marketed as a gift card or a gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise exempted general-use prepaid cards that may also be sold in the store along with gift cards or gift certificates, provided that a person acting reasonably under the circumstances would not be led to believe that the sign applies to all cards sold in the store. (*See, however,* comment 5(c)–4.ii.)

3. *Examples of marketed or labeled as a gift card or gift certificate.*

i. The following are examples of marketed or labeled as a gift card or gift certificate:

A. Using the word "gift" or "present" on a card or accompanying material, including documentation, packaging and promotional displays;

B. Representing or suggesting that a card can be given to another person, for example, as a "token of appreciation" or a "stocking stuffer," or displaying a congratulatory message on the card or accompanying material;

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or a holiday or congratulatory message, on a card, accompanying documentation, or promotional material;

ii. The term does not include the following:

A. Representing that a card can be used as a substitute for a checking, savings, or deposit account;

B. Representing that a card can be used to pay for a consumer's health-related expenses—for example, a card tied to a health savings account;

C. Representing that a card can be used as a substitute for travelers checks or cash;

D. Representing that a card can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. *Reasonable policies and procedures to avoid marketing as a gift card.* The exemption for a general-use prepaid card that is reloadable and not marketed or labeled as a gift card or gift certificate in § 235.5(c) applies if a reloadable general-use prepaid card is not marketed or labeled as a gift card or gift certificate and if persons involved in the distribution or sale of the card, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable general-use prepaid card from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the general-use prepaid card is not being marketed as a gift card. Whether a general-use prepaid card has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable person would be led to believe that the general-use prepaid card is a gift card or gift certificate. The following examples illustrate the application of § 235.5(c):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for exempted products under § 235.5(c), including general-purpose reloadable cards, such that a reasonable person would not believe that the exempted cards are gift cards. The exemption in § 235.5(c) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in same facts as in comment 5(c)–4.i, except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating "Gift Cards" appears prominently at the top of the display. The exemption in § 235.5(c) does not apply with respect to the general-purpose reloadable cards because policies and procedures reasonably designed to avoid the marketing of exempted cards as gift cards or gift certificates are not maintained.

iii. Same facts as in same facts as in comment 5(c)–4.i, except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from exempted cards, with gift cards on one side of the display and exempted cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating "Gift Cards" at the top of the display or located near the display. The exemption in § 235.5(c) applies because policies and

procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in same facts as in comment 5(c)–4.i,, except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exemption in § 235.5(c) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

5. *On-line sales of prepaid cards.* Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on the home page that prominently states "Gift Cards," "Gift Giving," or similar language without mention of other available products, or use a web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Under these facts, the Web site has marketed all such products as gift cards or gift certificates, and the exemption in § 235.5(c) does not apply to any products sold on the Web site.

6. *Temporary non-reloadable cards issued in connection with a general-purpose reloadable card.* Certain general-purpose prepaid cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the card holder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the reloadable card, the exemption in § 235.5(c) applies as long as the card is not marketed as a gift card or gift certificate.

Sec. 235.6 Prohibition on Circumvention or Evasion

1. *Illustration of circumvention or evasion.* A finding of evasion or circumvention will depend on all relevant facts and circumstances.

i. *Example.* Circumvention or evasion of the interchange transaction fee restrictions is indicated in the following example: The total amount of payments or incentives received by an issuer from a payment card network during a calendar year in connection with electronic debit transactions, other than interchange transaction fees passed through to the issuer by the network, exceeds the total amount of all fees paid by the issuer to the network for electronic debit transactions during that year.

ii. *Incentives or fees considered.* Payments or incentives paid by a payment card network could include, but are not limited to, marketing incentives, payments or rebates for meeting or exceeding a specific transaction volume, percentage share or dollar amount of transactions processed, or other fixed payments for debit card related activities. Incentives or payments made by a payment card network do not include interchange transaction fees that are passed through to the issuer by the network. In addition, funds received by an issuer from a payment card network as a result of chargebacks or violations of network rules or requirements by a third party do not constitute incentives or payments made by a payment card network. Fees paid by an issuer to a payment card network include, but are not limited to network processing, or switch fees, membership or licensing fees, network administration fees, and fees for optional services provided by the network.

2. *Examples of circumstances not involving circumvention or evasion.* The following examples illustrate circumstances that would not indicate circumvention or evasion of the interchange transaction fee restrictions in §§ 235.3 and 235.4:

i. Because of an increase in debit card transactions that are processed through a payment card network during a calendar year, an issuer receives an additional volume-based incentive payment from the network for that year. Over the same period, however, the total network processing fees the issuer pays the payment card network with respect to debit card transactions also increase so that the total amount of fees paid by the issuer to the network continue to exceed payments or incentives paid by the network to the issuer. Under these circumstances, the issuer does not receive any net compensation from the network for electronic debit transactions, and thus, no circumvention or evasion of the interchange transaction fee restrictions has occurred.

ii. Because of an increase in debit card transactions that are processed through a payment card network during a calendar year, an issuer receives a rate reduction for network processing fees that reduces the total amount of network processing fees paid by the issuer during the year. However, the total amount of all fees paid to the network by the issuer for debit card transactions continues to exceed the total amount of payments or incentives received by the issuer from the network for such transactions. Under these circumstances, the issuer does not receive any net compensation from the network for electronic debit transactions and thus, no circumvention or evasion of the interchange transaction fee restrictions has occurred.

3. *No applicability to exempt issuers or electronic debit transactions.* The prohibition against circumventing or evading the interchange transaction fee restrictions does not apply to issuers or electronic debit transactions that qualify for an exemption under § 235.5 from the interchange transaction fee restrictions.

Sec. 235.7 Limitations on Payment Card Restrictions

1. *Application of small issuer, government-administered payment program, and reloadable card exemptions to payment card network restrictions.* The exemptions under § 235.5 for small issuers, cards issued pursuant to government-administered payment programs, and certain reloadable prepaid cards do not apply to the limitations on payment card network restrictions. For example, an issuer of debit cards for government-administered payment programs, while exempt from the restrictions on interchange transaction fees, is subject to the requirement that electronic debit transactions made using such cards must be capable of being processed on at least two unaffiliated payment card networks and to the prohibition on inhibiting a merchant's ability determine the routing for electronic debit transactions.

7(a) Prohibition on Network Exclusivity

1. *Personal Identification Number (PIN) debit.* The term "PIN debit" refers to a cardholder's use of a personal identification number, or PIN, to authorize a debit card transaction. Payment card networks that process debit card transactions that are typically authorized by means of a cardholder's entry of a PIN are referred to as "PIN" or "PIN-based" (or single message) debit networks.

2. *Signature debit.* The term "signature debit" generally refers to a cardholder's use of a signature to authorize a debit card transaction. Payment card networks that process debit card transactions that are typically authorized by means of a cardholder's signature are referred to as "signature" or "signature-based" debit (or dual message) networks.

Alternative A (Two unaffiliated networks)

3. *Scope of restriction.* Section 235.7(a) does not require an issuer to have multiple, unaffiliated networks available for each method of cardholder authorization. For example, it is sufficient for an issuer to issue a debit card that operates on one signature-based card network and on one PIN-based card network, as long as the two card networks are not affiliated. Alternatively, an issuer may issue a debit card that is accepted on two unaffiliated signature-based card networks or on two unaffiliated PIN-based card networks.

Alternative B (Two unaffiliated networks for each authorization method)

3. *Scope of restriction.* Section 235.7(a) provides that each electronic debit transaction, regardless of the method of authorization used by the cardholder, must be able to be processed on at least two unaffiliated payment card networks. For example, if a cardholder authorizes an electronic debit transaction using a signature, that transaction must be capable of being processed on at least two unaffiliated signature-based payment card networks. Similarly, if a consumer authorizes an

electronic debit transaction using a PIN, that transaction must be capable of being processed on at least two unaffiliated PIN-based payment card networks. The use of alternative technologies, such as contactless or radio-frequency identification (RFID), to authorize a transaction does not constitute a separate method of authorization because such transactions are generally processed over either a signature debit network or a PIN debit network.

4. *Examples of limited geographic or merchant acceptance networks.* Section 235.7(a) requires that a payment card network (or combination of payment card networks) meet geographic and merchant acceptance requirements to satisfy the rule. The following are examples of payment card networks that would not meet the geographic or merchant acceptance tests:

i. A payment card network that operates in only a limited region of the United States would not meet the geographic test, unless one or more other unaffiliated payment card network(s) are also enabled on the card, such that the combined geographic coverage of networks permits the card to be accepted on at least two unaffiliated payment card networks for any geographic area in the United States. For example, an issuer may not issue a debit card that is enabled solely on one payment card network that is accepted nationwide and another unaffiliated payment card network that operates only in the Midwest United States. In such case, the issuer would also be required to add one or more unaffiliated payment card networks that would generally enable transactions involving the card to be processed on at least two unaffiliated payment card networks in almost all of the rest of the country. A payment card network is considered to have sufficient geographic reach even though there may be limited areas in the United States that it does not serve. For example, a national network that has no merchant acceptance in Guam or American Samoa would nonetheless meet the geographic reach requirement.

ii. A payment card network that is accepted only at a limited category of merchants (for example, at a particular grocery store chain or at merchants located in a particular shopping mall).

5. *Examples of prohibited restrictions on an issuer's ability to contract.* The following are examples of prohibited network restrictions on an issuer's ability to contract with other payment card networks:

i. Network rules or contract provisions limiting or otherwise restricting the other payment card networks that may be enabled on a particular debit card.

ii. Network rules or guidelines that allow only that network's brand, mark, or logo to be displayed on a particular debit card or that otherwise limit the number, or location, of network brands, marks, or logos that may appear on the debit card.

6. *Network logos or symbols on card not required.* Section 235.7(a) does not require that a debit card identify the brand, mark, or logo of each payment card network over which an electronic debit transaction may be processed. For example, a debit card that is enabled for two or more unaffiliated payment card networks need not bear the logos or symbols for each card network.

7. *Voluntary exclusivity arrangements prohibited.* Section 235.7(a) requires the issuance of debit cards that are enabled on at least two unaffiliated payment card networks in all cases, even if the issuer is not subject to any rule of, or contract, arrangement or other agreement with, a payment card network requiring that all or a specified minimum percentage of electronic debit transactions be processed on the network or its affiliated networks.

Alternative A Only (Two unaffiliated networks)

8. *Affiliated payment card networks.* Section 235.7(a) does not prohibit an issuer from including an affiliated payment card network among the networks that may process an electronic debit transaction with respect to a particular debit card, as long as at least two of the networks that are enabled on the card are unaffiliated. For example, an issuer may offer debit cards that are accepted on a payment card network for signature debit transactions and in an affiliated payment card network for PIN debit transactions as long as those debit cards may also be accepted on another unaffiliated payment card network.

Alternative B Only (Two unaffiliated networks for each authorization method)

8. *Affiliated payment card networks.* Section 235.7(a) does not prohibit an issuer from including an affiliated payment card network among the networks that may process an electronic debit transaction for a particular debit card, as long as, for each method of authorization, at least two of the networks that are enabled on the card are unaffiliated. For example, an issuer may offer debit cards that are accepted on a payment card network for signature debit transactions and on an affiliated payment network for PIN debit transactions as long as those debit cards may also be accepted on a second signature debit network and a second PIN debit network, both of which are unaffiliated with the first network.

7(b) Prohibition on Routing Restrictions

1. *Relationship to the network exclusivity restrictions.* The prohibition on routing restrictions applies solely to the payment card networks on which an electronic debit transaction may be processed for a particular debit card. Thus, an issuer or payment card network is prohibited from inhibiting a merchant's ability to route or direct the transaction over any of the payment card networks that the issuer has enabled to process an electronic debit transaction for that particular debit card.

2. *Examples of prohibited merchant restrictions.* The following are examples of issuer or network practices that would inhibit a merchant's ability to direct the routing of an electronic debit transaction that are prohibited under § 235.7(b):

i. Prohibiting a merchant from encouraging or discouraging a cardholder's use of a particular method of debit card authorization, such as rules prohibiting merchants from favoring a cardholder's use of PIN debit over signature debit, or from discouraging the cardholder's use of signature debit.

ii. Establishing network rules or designating issuer priorities directing the processing of an electronic debit transaction on a specified payment card network or its affiliated networks, except as a default rule in the event the merchant, or its acquirer or processor, does not designate a routing preference, or if required by state law.

iii. Requiring a specific method of debit card authorization based on the type of access device provided by to the cardholder by the issuer, such as requiring the use of signature debit if the consumer provides a contactless debit card.

3. *Real-time routing decision not required.* Section 235.7(b) does not require that the merchant have the ability to select the payment card network over which to route or direct a particular electronic debit transaction at the time of the transaction. Instead, the merchant and its acquirer may agree to a pre-determined set of routing choices that apply to all electronic debit transactions that are processed by the acquirer on behalf of the merchant.

By order of the Board of Governors of the Federal Reserve System, December 16, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–32061 Filed 12–27–10; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Tuesday,
December 28, 2010

Part III

Consumer Product Safety Commission

16 CFR Parts 1219, 1220, 1500, et al.
Full-Size Baby Cribs and Non-Full-Size Baby Cribs: Safety Standards; Revocation of Requirements; Third Party Testing for Certain Children's Products; Final Rules

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1219, 1220, and 1500

Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the United States Consumer Product Safety Commission ("CPSC," "Commission," or "we") to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing safety standards for full-size and non-full-size baby cribs in response to the direction under section 104(b) of the CPSIA.[1] Section 104(c) of the CPSIA specifies that the crib standards will cover used as well as new cribs. The crib standards will apply to anyone who manufactures, distributes, or contracts to sell a crib; to child care facilities, family child care homes, and others holding themselves out to be knowledgeable about cribs; to anyone who leases, sublets, or otherwise places a crib in the stream of commerce; and to owners and operators of places of public accommodation affecting commerce.

DATES: *Effective Date:* The rule will become effective on June 28, 2011. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of June 28, 2011.

Compliance Dates: Compliance with this rule with respect to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce is required starting on December 28, 2012. For all other entities subject to the rule, compliance with this rule is required starting on June 28, 2011.

[1] The Commission voted 5–0 to approve publication of this final rule. Chairman Inez M. Tenenbaum, Commissioner Thomas H. Moore, Commissioner Robert S. Adler, and Commissioner Anne M. Northup filed statements concerning this action which may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/statements.html* or obtained from the Commission's Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Christopher Melchert, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7588; *cmelchert@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

1. Section 104(b) of the Consumer Product Safety Improvement Act

The Consumer Product Safety Improvement Act of 2008 ("CPSIA", Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing safety standards for full-size and non-full-size cribs that are substantially the same as voluntary standards developed by ASTM International (formerly known as the American Society for Testing and Materials). The standard for full-size cribs is substantially the same as a voluntary standard developed by ASTM, ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs,* but with two modifications that strengthen the standard. The standard for non-full-size cribs is substantially the same as ASTM F 406–10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards,* but with four modifications that strengthen the standard.

2. Section 104(c) of the CPSIA and the Proposed Rule

The crib standards are different from standards for the other durable infant or toddler products that section 104 of the CPSIA directs the Commission to issue. Section 104(c)(1) of the CPSIA makes it a prohibited act under section 19(a)(1) of the Consumer Product Safety Act ("CPSA") for any person to whom section 104(c) of the CPSIA applies to "manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under subsection (b) [of the CPSIA]." Section 104(c)(3) of the CPSIA defines "crib" as including new and used cribs, full-size and non-full-size cribs, portable cribs, and crib pens.

Section 104(c)(2) of the CPSIA states that the section applies to any person that:

(A) manufactures, distributes in commerce, or contracts to sell cribs;

(B) based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes;

(C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or

(D) owns or operates a place of public accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase "not owned by the Federal Government").

Section 104(c)(2) of the CPSIA.

Thus, the crib standards apply to owners and operators of child care facilities, family child care homes, and places of public accommodation such as hotels and motels, as well as to manufacturers, distributors, and retailers of cribs. Other durable infant or toddler product standards issued under section 104 of the CPSIA apply to products manufactured or imported on or after the effective date of the standard. However, under section 104(c) of the CPSIA, after the applicable date of compliance, it will be unlawful for any of the entities identified in section 104(c)(2) of the CPSIA to sell, lease, or otherwise distribute or provide a crib for use that does not meet the new CPSC crib standards, regardless of the date on which the crib was manufactured.

In the **Federal Register** of July 23, 2010 (75 FR 43308), the Commission published a proposed rule that would establish standards for full-size and non-full-size cribs. The proposed rule would incorporate by reference the following ASTM standards with some modifications: ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs,* and ASTM F 406–10, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.*

3. Previous Commission Crib Standards (16 CFR Parts 1508 and 1509)

The Commission first issued mandatory regulations for full-size cribs in 1973 (amended in 1982), which were codified at 16 CFR part 1508 under the Federal Hazardous Substances Act ("FHSA"). In 1976, the Commission issued similar regulations for non-full-size cribs (also amended in 1982), which were codified at 16 CFR part 1509. The requirements of 16 CFR parts 1508 and 1509 have been included in ASTM F 1169–10 and F 406–10a, respectively. However, the recordkeeping requirements in the

ASTM standards are expanded from the 3-year retention period that was required in 16 CFR parts 1508 and 1509 to a 6-year retention period, which is consistent with the consumer registration provision in section 104(d) of the CPSIA.

Elsewhere in this issue of the **Federal Register**, we are revoking the CPSC regulations for full-size and non-full-size cribs at 16 CFR parts 1508 and 1509. The new crib standards in this final rule, which incorporate the applicable ASTM standards, include the requirements of 16 CFR parts 1508 and 1509. Revoking 16 CFR parts 1508 and 1509 will allow all the crib-related requirements to be together and will avoid confusion about which requirements apply to cribs.

4. Previous Commission Activities Concerning Cribs

As detailed in the preamble to the proposed rule (75 FR at 43309), we have taken numerous regulatory and nonregulatory actions concerning crib hazards. In 1996, the Commission published an advance notice of proposed rulemaking ("ANPR") under the FHSA to address the hazard of crib slat disengagement, 61 FR 65996 (Dec. 16, 1996). When the Commission proposed the new crib standards under section 104 of the CPSIA, it published a notice terminating the rulemaking it had begun with the 1996 ANPR because the slat disengagement hazard is addressed by the new standards that the Commission is issuing. 75 FR 43107 (July 23, 2010).

The Commission's Office of Compliance has been involved with numerous investigations and recalls of cribs. Since 2007, the CPSC has issued 46 recalls of more than 11 million cribs. All but seven of these recalls were for product defects that created a substantial product hazard, and not for violations of the federal crib regulations.

Other previous actions include: (1) An ANPR that the Commission published in the **Federal Register** on November 25, 2008 (73 FR 71570) in preparation for this rulemaking, which discussed options to address the hazards that CPSC staff had identified in the reported crib incidents and recalls; and (2) a public roundtable meeting concerning crib safety that CPSC staff held on April 22, 2009. Information about the crib roundtable and the presentations made by CPSC staff and others are on the Commission's Web site at *http://www.cpsc.gov/info/cribs/infantsleep.html*.

B. The Products and Their Market

1. Definitions Under the CPSIA and the Crib Standards

The Commission's previous crib standards in 16 CFR 1508 and 1509 contained definitions of "full-size crib" and "non-full-size crib." According to 16 CFR parts 1508 and 1509, what principally distinguishes full-size cribs from non-full-size cribs are the interior dimensions of the crib. Also, according to these standards, a full-size crib is intended for use in the home, and a non-full-size crib is intended for use "in or around the home, for travel and other purposes." A full-size crib has interior dimensions of 28 ± 5/8 inches (71 ± 1.6 centimeters) in width by 52 3/8 ± 5/8 inches (133 ± 1.6 centimeters) in length. A non-full-size crib may be either smaller or larger than these dimensions. Full-size and non-full-size cribs also differ in the height of the crib side or rail. Non-full-size cribs include oversized, specialty, undersized, and portable cribs. However, any products with mesh/net/screen siding, non-rigidly constructed cribs, cradles, car beds, baby baskets, and bassinets are excluded from the non-full-size crib requirements of 16 CFR part 1509.

Essentially, these definitions are carried over to the new crib standards with some important differences due to section 104(c) of the CPSIA. Because section 104(c) of the CPSIA explicitly includes used cribs in the definition of "crib," the definitions of full-size and non-full-size crib in the CPSC standards also include used cribs. The definition of "full-size crib" in part 1508 was limited to cribs "intended for use in the home." However, section 104(c) of the CPSIA explicitly includes full-size and non-full-size cribs in child care facilities (including family child care homes) and cribs in places of public accommodation affecting commerce. The CPSIA defines a "place of public accommodation affecting commerce" with reference to the Federal Fire Prevention and Control Act of 1974 (but without the phrase that excludes establishments owned by the Federal Government). Thus, the CPSIA defines "places of public accommodation" as:

> any inn, hotel, or other establishment * * * that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

15 U.S.C. 2203(7).

Therefore, the definitions of full-size and non-full-size crib in the CPSC standards include new and used cribs, cribs in child care facilities, family child care homes, and cribs in places of public accommodation.

2. Full-Size Cribs

A full-size crib has specific interior dimensions of 28 ± 5/8 inches (71 ± 1.6 centimeters) in width and 52 3/8 ± 5/8 inches (133 ± 1.6 centimeters) in length and is designed to provide sleeping accommodations for an infant.

CPSC staff estimates that there are currently 68 manufacturers or importers supplying full-size cribs to the U.S. market. Ten of these firms are domestic importers (15 percent); 42 are domestic manufacturers (62 percent); 7 are foreign manufacturers (10 percent); and 2 are foreign importers (3 percent). Insufficient information was available about the remaining firms to categorize them.

Based on information from a 2005 survey conducted by the American Baby Group, CPSC staff estimates annual sales of new cribs to be about 2.4 million, of which approximately 2.1 million are full-size cribs. (This number could be an underestimate if new mothers buy more than one crib.) CPSC staff estimates that there are currently approximately 591 models of full-size cribs compared to approximately 81 models of non-full-size cribs. Thus, approximately 88 percent of crib models are full-size cribs.

3. Non-Full-Size Cribs

A non-full-size crib may be either smaller or larger than a full-size crib, or shaped differently than the usual rectangular crib. The category of non-full-size cribs includes oversized, specialty, undersized, and portable cribs, but does not include any product with mesh/net/screen siding, non-rigidly constructed cribs, cradles, car beds, baby baskets, or bassinets. The CPSC standard for non-full-size cribs does not apply to play yards, which are mesh or fabric-sided products.

CPSC staff estimates that there currently are at least 17 manufacturers or importers supplying non-full-size cribs to the U.S. market. Five of these firms are domestic importers and 10 are domestic manufacturers. Insufficient information is available to determine whether the remaining firms are manufacturers or importers. CPSC staff estimates that there are approximately 2.4 million cribs sold to households annually. Of these, approximately 293,000 are non-full-size cribs.

4. Retailers, Child Care Facilities, and Places of Public Accommodation

CPSC staff is unable to estimate the number of retailers that may sell or provide cribs. We can estimate, however, that there are approximately 24,985 retail firms in the United States (at least 5,292 of which sell used products). The number of retailers that sell or provide cribs would be some subset of that number.

CPSC staff estimates that there are approximately 59,555 firms supplying child care services. We received comments from child care organizations about the cribs they use. According to these comments, the average child care center has between 4 and 45 cribs, so, assuming that the number of firms supplying child care services is the same as child care centers discussed in the comments, child care centers could have roughly 774,180 cribs total. We estimate that there are approximately 43,303 firms providing public accommodation. We did not receive any comments from such firms and cannot estimate how many cribs may be in use in places of public accommodation.

C. Incident Data

The preamble to the proposed rule (74 FR at 43310 through 43311) provided detailed information concerning incident data based on information from the CPSC's Early Warning System ("EWS"), a pilot project to monitor incident reports related to cribs and other infant sleep products. We summarize important aspects of the incident data in this section, but refer interested parties to the preamble to the proposed rule for more complete details. Data from EWS is not meant to provide an estimate of all crib-related incidents that have occurred during any particular time period. We used the EWS data for this rulemaking because, due to the larger number of follow-up investigations assigned from EWS incident reports, the EWS incidents provided the best illustration of the hazard patterns associated with incidents involving cribs.

Between November 1, 2007 and April 11, 2010, the Commission received reports through EWS of 3,584 incidents related to cribs. The year of the incident associated with these reports ranged from 1986 through 2010. However, very few crib-related incidents that occurred before 2007 are reflected in the EWS.

Of the 3,584 incidents reported through the EWS, CPSC staff identified 2,395 incidents as clearly involving full-size cribs; 64 incidents as clearly involving non-full-size cribs; and 1,125 incidents as lacking sufficient data for CPSC staff to determine whether they involved full-size or non-full-size cribs. The prevalent hazards reported in these incidents are common to all cribs, regardless of size. Given the predominance of incident reports identified as involving full-size cribs, the 1,125 incidents in which the size of the crib could not be determined are grouped with the category of full-size cribs.

1. Full-Size Cribs (Includes Cribs of Undetermined Size)

This section discusses incident data in the 3,520 reports from the EWS involving full-size cribs and cribs of an undetermined size. Of these 3,520 incident reports, there were 147 fatalities, 1,675 nonfatal injuries, and 1,698 noninjury incidents. (The noninjury incidents range from those that potentially could have resulted in injuries or fatalities to general complaints or comments from consumers). Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and non-injury incidents presented here may change in the future.

a. Fatalities

Between November 1, 2007 and April 11, 2010, a total of 147 fatalities associated with full-size (and undetermined size) cribs were reported to the Commission. A majority of the deaths (107 out of 147, or almost 73 percent) were not related to any structural failure or design flaw of the crib. There were 35 fatalities attributable to structural problems of the crib. Nearly all (34 of the 35) were due to head/neck/body entrapments. More than half of these (18 out of 35) were related to drop-side failures. Almost all of the crib failures—whether they occurred due to detachments, disengagements, or breakages—created openings in which the infant became entrapped.

b. Nonfatal Injuries

Of the 3,520 incident reports involving full-size (and undetermined size) cribs, 1,675 reported a crib-related injury. The vast majority (97 percent) of these injuries were not serious enough to require hospitalization. Approximately half of those that did require hospitalization involved limb or skull fractures and other head injuries resulting from falls from cribs. Most of the remaining injuries resulted from children getting their limbs caught between crib slats, falling inside the crib and hitting the crib structure, or getting stuck in gaps created by structural failures.

c. Hazard Pattern Identification

CPSC staff considered all 3,520 incidents (includes fatalities, nonfatalities, and non-injury incidents) involving full-size cribs (including cribs of undetermined size) to identify hazard patterns related to these incidents. CPSC staff grouped these incidents into four broad categories: (1) Product-related; (2) non-product-related; (3) recall-related; and (4) miscellaneous. More detail is provided in the Epidemiology staff's memorandum that was part of the CPSC staff's briefing package for the proposed rule, available on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf*.

Approximately 82 percent of the 3,520 incidents reported some sort of failure or defect in the product itself. In order of frequency, the hazard patterns reported included:

- Falls from cribs (approximately 23 percent of the 3,520 incidents);
- Crib drop-side-related problems (approximately 22 percent of the incidents and about 12 percent of all reported fatalities);
- Infants getting their limbs caught between the crib slats (approximately 12 percent of the incidents);
- Wood-related issues, such as slat breakages and detachments (approximately 12 percent of the incidents);
- Mattress support-related problems (approximately 5 percent of the incidents);
- Mattress fit problems (approximately 3 percent of the incidents);
- Paint-related issues (approximately 2 percent of the EWS incidents); and
- Miscellaneous problems with the crib structure (approximately 3 percent of incidents), including non-drop-side or drop gate failures, sharp catch-points, stability and/or other structural issues.

2. Non-Full-Size Cribs

This category includes portable cribs and other cribs that are either smaller or larger than the dimensions specified for full-size cribs. For its review of incident data, CPSC staff included in the category of non-full-size cribs only those cribs that it could positively identify as non-full-size cribs. CPSC staff is aware of 64 incidents related to non-full-size cribs that have been reported between November 1, 2007 and April 11, 2010. Among these incidents, there were 6 fatalities, 28 injuries, and 30 noninjury incidents. Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and noninjury incidents presented here may change in the future.

a. Fatalities

Of the six fatalities, three were attributed to the presence of a cushion/pillow in the sleep area. One fatality was due to the prone positioning of the infant on the sleep surface. One fatality resulted from the infant getting entrapped in a gap opened up by loose/missing screws. Very little information was available on the circumstances of the last fatality.

b. Nonfatal Injuries

Among the 28 nonfatal injuries reported, only 2 required any hospitalization. Most of the remaining injuries, which include fractures, bruises, and lacerations, resulted from children falling and hitting the crib structure while in the crib, falling or climbing out of the crib, and children getting their limbs caught in the crib slats.

c. Hazard Pattern Identification

CPSC staff considered all 64 incidents (including fatalities, nonfatalities, and non-injury incidents) involving non-full-size cribs to identify hazard patterns related to these incidents. The hazard patterns are similar to those among full-size cribs. In 72 percent of the incidents, product-related issues were reported. These primarily involved falls from cribs, limbs becoming caught between slats, issues related to drop-sides and non-drop-sides (such as detachments and operation/hardware issues), and wood-related issues (including three slat detachments). This category includes one fatality, which was related to non-drop-side hardware.

D. Voluntary and International Standards

As discussed in the preamble to the proposed rule (75 FR at 43311 through 43312), CPSC staff reviewed requirements of existing voluntary and international standards related to cribs. The primary standards currently in effect are the ASTM standards for full-size and non-full-size cribs, a Canadian standard, and a European standard. Underwriters Laboratories, Inc. ("UL") has a crib standard, UL 2275. However, the UL standard was not followed by crib manufacturers and is no longer an active standard.

1. The ASTM Standards

ASTM first published its voluntary standard for full-size cribs, ASTM F 1169, *Standard Specification for Full-Size Baby Crib,* in 1988, and has revised it periodically since then. In 2009, ASTM revised the standard significantly, including a limitation on movable sides that effectively eliminates the traditional drop-side design in which the front side of the crib can be raised and lowered. On June 1, 2010, ASTM approved the current version of its full-size crib standard with a slight change to the name, ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs.*

In 1997, ASTM first published a standard for non-full-size cribs, ASTM F 1822, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs.* In June 2002, in order to group products with similar uses, ASTM combined its non-full-size crib standard, ASTM F 1822–97, with its play yard standard (F 406–99, *Standard Consumer Safety Specification for Play Yards)* to create ASTM F 406–02, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.* ASTM revised ASTM F 406 several times subsequently. On June 1, 2010, ASTM approved the version of its non-full-size crib standard, ASTM F 406–10, upon which the CPSC's proposed standard was based. After we published our proposed rule in the **Federal Register** on July 23, 2010, ASTM revised its non-full-size crib standard again and approved ASTM F 406–10a on October 15, 2010. ASTM F 406–10a includes many of the changes which the proposed rule would have made to ASTM F 406–10, rearranges the order of some provisions, and contains some other editorial changes. Consequently, the final rule's non-full-size cribs standard is based on ASTM F 406–10a. We discuss differences between the proposed rule and ASTM F 406–10a in section F of this preamble.

2. International Standards

Several performance requirements in the crib standards derive from, or are similar to, requirements in Health Canada's crib standard, SOR/86–969, and the European standard, EN 716. These include the cyclic side (shake) test and the mattress support system vertical impact test from the Canadian standard, and the slat/spindle strength test from EN 716 requirements. (For more details on how the crib standards are based upon or are more stringent than certain international standards, we refer interested parties to the preamble to the proposed rule (75 FR at 43312).)

E. Response to Comments on the Proposed Rule

In the **Federal Register** of July 23, 2010 (75 FR 43308), the Commission published a proposed rule that would establish standards for full-size and non-full-size cribs. We received over 50 comments. These included comments from child care organizations, the Juvenile Products Manufacturers Association ("JPMA"), public interest groups, and individual consumers. The comments and the CPSC's responses are discussed below in section E.1 through E.31 of this document. To make it easier to identify comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, importance, or the order in which it was received.

1. Misplaced Focus on Drop-Sides

(*Comment 1)*—One commenter stated that focusing on drop-side cribs was misplaced. Rather, she suggested, new crib standards should focus on the structure and hardware of cribs.

(*Response 1)*—The CPSC agrees that the safety of the drop-side is just one issue and other issues, especially cribs' structural integrity and hardware, are crucial to crib safety. Although the prohibition of traditional drop-side cribs has received a great deal of attention, the CPSC's new crib standards have numerous provisions, particularly concerning crib hardware, which will improve the safety of cribs. See the discussion of the standards' requirements in section G of this preamble.

2. Applicability of Standards to Cribs in Child Care Centers

(*Comment 2)*—Several commenters associated with child care organizations or child care centers said that the crib standards should not apply to cribs in child care centers. They gave reasons such as: Caregivers are present at all times when babies are in cribs at child care centers; cribs in child care centers are specialty cribs that do not have the same safety issues as home cribs; and state licensing and safety requirements safeguard babies in cribs in child care centers. Some commenters stated that the crib standards are unique because, unlike other standards that hold product manufacturers or distributors responsible, the crib standards hold child care centers (which are consumers buying the cribs from these manufacturers and distributors) responsible.

(Response 2)—Section 104(c)(1) of the CPSIA states that it "shall be a violation of section 19(a)(1) of the Consumer Product Safety Act for any person to which this subsection applies to

manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under" section 104(b) of the CPSIA. Section 104(c)(2) of the CPSIA identifies various entities that are subject to section 104(c) of the CPSIA, and it expressly mentions persons who "based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes." The fact that a child care center may be subject to state regulation and licensing, or that caregivers at such facilities may be required to supervise babies in cribs, does not alter the applicability of section 104(c) of the CPSIA to child care facilities and family child care homes.

As for the commenter's claim that cribs in child care centers are different from those used in homes, the information that the CPSC has indicates that cribs used in child care centers are often substantially the same as cribs used in homes. CPSC staff has reports of incidents involving cribs in child care centers; the hazard scenarios associated with these incidents are the same as those for incidents that occur in homes.

3. Waiving Requirements for Child Care Centers

(*Comment 3)*—One commenter suggested waiving any requirement to replace cribs in child care and Head Start programs that comply with state licensing or national accreditation requirements, which mandate that all sleeping infants be within sight or sound of a caregiver at all times; and another commenter suggested a waiver of enforcement for cribs that are used in child care programs that comply with state licensing standards that require sleeping infants to be within sight and sound of a caregiver at all times. Some commenters asked that older cribs in child care centers be exempted from the rule (or allowed an enforcement waiver), as long as the cribs had not been recalled, thus shifting the burden of replacement from child care centers to manufacturers.

(Response 3)—We do not have the authority to exempt or waive requirements for cribs in child care centers or to allow older cribs to be replaced through recalls alone. As discussed in response to comments concerning the effective date at section G.10 of this document, we do have discretion to provide additional time for child care centers to come into compliance with the standards.

4. Crib-Related Incidents in Child Care Centers

(*Comment 4)*—One commenter recognized that there have been injuries and fatalities associated with drop-side cribs, but stated that banning drop-side cribs in child care settings would not address this threat to young children. The commenter stated that, because of the safety checks on cribs and monitoring of sleeping children in child care centers, issues with drop-side cribs do not occur in such programs as they might in other settings.

(*Response 4)*—As stated in our response to comment 2 in section E.2 of this document, section 104(c) of the CPSIA expressly mentions child care facilities and family child care homes as entities subject to the crib standards. The statute does not authorize us to consider safety checks, or the monitoring of sleeping children in child care facilities, or the rate at which safety issues might arise, or to exempt child care facilities for such reasons.

Additionally, our review of the incident data reported to the CPSC from November 1, 2007 through April 11, 2010, shows that at least two reports of incidents in child care facilities were received. Each report involved the structural failure of multiple drop-side cribs. Although no injuries were reported in these incidents, they presented the potential for serious injury or fatality.

(Comment 5)—Some comments noted that sleeping infants are not left unsupervised in drop-side or other types of cribs in child care centers and noted further that children in child care centers are in cribs only when they are sleeping.

(*Response 5)*—The CPSC has received at least 11 reports of injuries involving cribs in child care facilities, in which the injured infant was treated in a hospital emergency department. These injuries, usually due to a fall from a crib or an impact with the crib, were sustained while the infant was being taken care of at a child care facility. Clearly, the infants were not sleeping if the injuries were due to infants falling or impacting the crib.

5. Commercial vs. Noncommercial Cribs

(*Comment 6)*— Several commenters suggested that the crib standards should distinguish between "commercial" and "noncommercial" cribs. One commenter asked if there should be different crib standards for child care providers or other nonfamily situations, where cribs sustain more use, similar to the distinction between home and public playground equipment (the CPSC has separate guidelines for home and public playground equipment).

(Response 6)—Section 104 of the CPSIA does not make a distinction between commercial and noncommercial cribs but, rather, requires that all cribs within the scope of section 104(c) of the CPSIA—which explicitly includes cribs provided for use in child care centers and places of public accommodation—meet the crib standards promulgated by the Commission under section 104(b) of the CPSIA. Although ASTM has a voluntary standard applicable to "commercial cribs" (ASTM F 2710–08), section 104 of the CPSIA does not make such a delineation. Furthermore, ASTM's commercial crib standard requires commercial cribs to comply with either ASTM F 406 or ASTM F 1169, and this final rule adopts, with some modifications, both ASTM F 406 and ASTM F 1169. In its crib rulemaking, the Commission is following the specific statutory direction and definitions in the CPSIA. In contrast, when developing guidelines for public and home playgrounds, the Commission was not responding to a statutory mandate, and thus, it had the discretion to distinguish between public and home playground equipment.

6. Mesh/Nonrigid Full-Size Cribs

(Comment 7)— One commenter suggested that the full-size crib standard should apply to rigid cribs only, and not be applicable to full-size cribs that have sides or ends made from mesh, fabric, or another nonrigid material. The commenter referred to the scope of the proposed non-full-size crib standard, which is limited to rigid products only.

(Response 7)—We are not aware of any full-size mesh/fabric cribs currently being sold. In contrast, there are numerous non-full-size mesh/fabric cribs (*i.e.,* play yards) currently on the market. The CPSC agrees that for non-full-size products, different requirements for rigid versus mesh products are necessary because the construction differences may make it impossible to test both the same way. The ASTM standard for non-full-size cribs includes both rigid and mesh/fabric non-full-size cribs. Although there are requirements in the ASTM standard specifically intended for mesh/fabric products, the scope of the CPSC's standard for non-full-size cribs is limited to rigid products because section 104 of the CPSIA explicitly lists cribs and play yards as separate categories of products. Therefore, we plan to develop a separate standard for mesh/fabric non-full-size cribs (*i.e.,* play yards). Currently, there is no voluntary

standard or proposed regulation specifically for mesh/fabric *full-size* cribs. However, the CPSC's standard for full-size cribs contains general, labeling, and some performance requirements that would be applicable to any full-size crib, whether it has rigid or mesh/fabric sides. Thus, excluding these products from the scope of the CPSC's full-size crib standard, as suggested by the commenter, would leave such cribs unregulated. Absent a voluntary standard that covers mesh/fabric full-size cribs, it is not advisable to exclude these products from the scope of a full-size crib regulation.

7. Play Yards

(*Comment 8)*—Some commenters were concerned that the rule might result in child care centers or consumers using play yards instead of cribs. These commenters implied that play yards are not as safe as cribs for sleeping infants. One commenter, who is child care provider, stated that she uses only play yards, not cribs.

(*Response 8)*—The final rule does not address any safety aspects of play yards. Play yards are a separate product category under section 104 of the CPSIA, and we intend to develop a separate standard for play yards in the future.

(Comment 9)—Two commenters expressed concern about using play yards as an alternative to cribs in day care centers as a way of mitigating costs to child care providers. Both felt that this alternative might be perceived as advocating the use of play yards, which they felt would decrease the safety and quality of care. Some commenters noted that play yards are not an option for some child care centers due to state licensing laws.

(Response 9)—Although the CPSC does not advocate the use of play yards instead of cribs in child care environments, issues regarding the possible use of play yards or other products (in place of cribs) and state laws are outside the scope of this rulemaking. This final rule establishes standards for full-size and non-full-size cribs.

8. Economic Impact of CPSC's Crib Standards on Child Care Centers

(Comment 10)—Several commenters expressed concern that the proposed rule, if finalized, would place a large financial burden on child care centers, particularly given the tight budgets and lethargic economy. One commenter estimated that the total one-time cost to day care centers to replace their cribs could be as much as $600 million, with an additional $2.5 million required for disassembly, disposal, and assembly. The same commenter noted that the preamble to the proposed rule concluded that "the proposed changes to the voluntary standard should not significantly affect replacement costs" (75 FR at 43319). Generally, commenters objected to purchasing new cribs to replace recently-purchased cribs that had no safety issues. Several commenters were concerned that some child care centers might be driven out of business.

(Response 10)—We recognize the potentially large impact the crib standards could have on child care providers. The Regulatory Flexibility Act discussion in the preamble to the proposed rule invited comment on the market for cribs and the amount of time manufacturers would need to meet current market demand and additional demand created by child care centers and other places where cribs are provided for use (75 FR at 43316). It also discussed the possible impact on small child care centers and stated that the impact "could be significant on some small child care centers if they had to replace their cribs all at once" and that some might decide to replace their non-full-size cribs with play yards (*Id.* at 43318). The initial regulatory flexibility analysis in the briefing package for the proposed rule assumed that most, if not all, child care centers use smaller, non-full-size cribs; thus, staff did not expect a significant impact associated with full-size cribs. (*See* Tabs F and G of the staff's briefing package on the proposed rule at: *http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf*). In the initial regulatory flexibility analyses, all of the effects on child care centers were considered in the analysis for non-full-size cribs.

We have modified our Regulatory Flexibility Act discussion in the final rule. CPSC staff's analysis using data provided by the Early Care and Education Consortium (ECEC), the National Association for Family Child Care (NAFCC), and the National Head Start Association (NHSA), yields one-time replacement costs of approximately $387 million. The discussion also has been modified to take into account specifically the possibility that child care centers might go out of business, as well as the impact of the final rule on families using child care.

(Comment 11)—Several commenters expressed concern about the ability of child care providers to pass on costs to their clients to reduce the economic impact of the final rule. These commenters stated that they felt the analysis in the preamble to the proposal did not appreciate child care centers' limited ability to pass on such costs. The commenters noted that most of their clients are struggling already to pay for child care. (The price range for child care cited by one commenter was from $4,550 to more than $18,000 per year.) The commenters added that most child care centers only have a few customers, so their ability to raise large sums of money by increasing the cost to clients to defray the cost of replacement cribs is limited.

(Response 11)—The Regulatory Flexibility Act discussion in the preamble to the proposed rule did not suggest that all cost increases associated with the proposed rule would be passed on to consumers, only that some portion of those costs might be passed on, thereby mitigating the impact of the proposed rule on small child care centers (*see* 75 FR at 43318). We recognize that the economic impact on any given entity may vary, depending on a variety of factors, such as the size of the affected entity, the presence or absence of competitors that may affect an entity's ability to raise prices or pass along costs to its customers, and the types of cribs purchased and an affected entity's ability to comply with the standards.

(*Comment 12)*—One commenter stated that, despite the high quality of the cribs used at its child care center and a lack of incidents there, the child care center had been informed that its cribs do not meet the proposed standard. The commenter expressed concern that "the standards could be eliminating a company that produces extremely high quality materials and is very safety conscious."

(Response 12)—The final rule may have the effect of eliminating particular crib models from the marketplace. However, these crib models likely will be replaced by modified versions that comply with the new standards. The final rule is unlikely to drive many manufacturers out of business, particularly those with otherwise high quality cribs that may require only minimal design modifications to come into compliance with the new standards. This is especially the case with manufacturers that supply many products other than just cribs to the market, including the company mentioned in the comment.

9. Fixing or Retrofitting Cribs

(Comment 13)—Three commenters (all of whom were child care providers) requested that the CPSC provide methods of checking whether their current cribs would meet the new standards. They also requested that the final rule include descriptions of how to

fix cribs that fail a particular requirement (*i.e.,* retrofit), as a way to limit the number of new cribs that must be purchased. These comments mentioned retrofits to handle drop-side cribs in particular.

(Response 13)—Section 104(c) of the CPSIA requires child care centers to provide cribs that comply with the new crib standards once they are in effect. The standards not only prohibit traditional drop-sides, but they also have complex requirements, such as those for hardware, that make it difficult to determine whether an existing crib would meet the new standards without testing that individual crib. Because the crib would be destroyed in the process of testing, it is impossible to test each crib. Therefore, we cannot provide methods to check existing cribs for compliance with the CPSC's new crib standards. We also note that retrofits that would be appropriate for a recall might not be sufficient to meet the requirements of the new standards. For example, manufacturers have offered immobilizers in the past to address drop-side hazards on recalled cribs. This retrofit would not be sufficient to meet the crib standards. An immobilizer merely covers up part of the drop-side hardware and makes the drop-side unusable while in place, but it would not prevent a user from removing the retrofit and using the drop-side again.

10. Effective Date/Enforcement Policy

(Comment 14)—Most commenters supported the proposed six-month effective date for manufacturers and distributors of cribs, except one commenter requested (without providing any explanation or support) one to two years for manufacturers and distributors of non-full-size cribs. Many commenters, however, requested a longer effective date for child care centers to allow them to spread the costs of compliance over a longer period of time and to ensure that there are a sufficient number of compliant cribs available for purchase. Most of these commenters suggested an additional six months for cribs in child care centers, and two commenters suggested a five-year effective date for child care centers.

(*Response 14)*—We recognize that complying with the new crib standards may place a significant financial burden on child care centers. Nevertheless, section 104(c) of the CPSIA requires that child care centers provide cribs for use that meet the CPSC's new crib standards when these standards are in effect. The Commission recognizes that child care facilities face unique circumstances. Collectively, child care centers purchase and provide for use hundreds of thousands of cribs. Having a sufficient number of cribs is essential to their business because, if they provide care for infants, they cannot operate without providing cribs for their customers' use.

Based on a 2005 U.S. Department of Education's National Household Education Surveys Program ("NHES") Early Childhood Program Survey, approximately 774,000 children under the age of one year old are in nonparental, nonrelative child care arrangements each week. We understand from commenters that the typical life cycle of a crib used in a child care center is 10 years. Thus, we estimate that, in any given year, child care providers replace approximately 77,000 cribs. Assuming that one crib must be provided for each child under the age of one, at least 700,000 cribs—ten times more than the annual average—would be needed to replace noncompliant cribs when the new standards take effect. This demand would be added to the demand of private households for new compliant cribs and any cribs replaced by the 53,000 places of public accommodation covered by section 104 of the CPSIA.

The Commission has the discretion to set the effective date for the crib standards, and could set an effective date longer than six months for all entities that are subject to the standards, or could provide a longer period just for child care centers to comply with the new crib standards. Balancing all of the concerns expressed by the commenters, the final rule provides an additional 18 months for child care facilities, family child care homes, and places of public accommodation to comply with the new standards.

(Comment 15)—One commenter suggested that we establish an enforcement policy that would allow "a practical phased effective date for hospitality and commercial facilities" (the latter being interpreted by the commenter as including child care providers) and distinguish between commercial- and noncommercial-use products.

(*Response 15)*—Section 104(c) of the CPSIA does not distinguish between commercial and noncommercial cribs and does require cribs in child care centers and places of public accommodation to comply with the new crib regulations. As discussed in the previous response, the Commission has discretion to set effective and compliance dates for the new standards.

Although the Commission received numerous comments from child care centers concerning their difficulties with meeting the new crib standards within six months, we did not receive any comments from hotels or similar places of public accommodation indicating the need for additional time to obtain complying cribs for such establishments. We did receive one comment from JPMA requesting additional time for "hospitality and commercial facilities," noting that the need for these entities to "dispose of their inventories of non-compliant product and repurchase all new replacement products * * * will place a tremendous financial burden on those facilities, requiring an enormous capital investment as a result of the wholesale changes to inventory." Although child care commenters provided detailed information about the number of cribs in child care centers, the normal rate of replacement, and the anticipated costs of complying with the new crib standards, we did not receive such information concerning places of public accommodation. However, places of public accommodation are similarly situated to child care centers in that they must purchase cribs and then provide them for their customers to use and will likely face the same difficulties as child care centers in complying with the new crib standard in a short period of time. Therefore, the Commission is providing a longer compliance period for places of public accommodation as well as child care centers.

11. Effect on Places of Public Accommodation

(*Comment 16)*—Two commenters, neither of which were places of public accommodation nor did they represent places of public accommodation, expressed concern about the potential cost impact on places of public accommodation.

(*Response 16)*—The CPSC believes that while some providers of public accommodation may provide a few cribs for use by customers, the number of non-full-size cribs at any one establishment is likely to be low. Firms may opt to reduce the impact of the rule by ceasing to provide cribs to their customers, not replacing all of their cribs, or providing play yards instead. Therefore, it is unlikely that the crib standards will have a significant impact on a substantial number of firms providing public accommodation. However, we have to expect that some portion of the more than 53,000 places of public accommodation covered by the Act that provide cribs for their customers will replace their cribs to be in compliance with this rule. There could be as many as 160,000 cribs that might need to be replaced. As explained in the previous response, places of public accommodation and child care

centers are similarly situated in some respects, and therefore, the Commission is providing a longer compliance period for places of public accommodation as well as child care facilities, and family child care homes.

12. Expiration Date/Definition of Useful Life of Crib

(Comment 17)—One commenter asked whether cribs should have an expiration date, given that many of the identified hazards appear to result from prolonged use. The same commenter asked how one would define the useful life of a crib. For example, would it be defined in terms of the product's age in years, or, how often it had been used? The commenter also asked how the disassembly and reassembly of a crib would be considered, and what effect this would have on the crib's components and hardware.

(Response 17)—It would be extremely difficult to include a definition of useful life or to require that manufacturers provide an expiration date for cribs. As recognized by the commenter, the condition of a crib, including the security of components and hardware, can be affected by use. Moreover, each family uses a crib differently, depending on the activity level of each child, the length of time each child uses the crib, and the frequency of disassembling and reassembling the crib. Manufacturing differences and variations in materials among cribs, also might affect a crib's useful life. Thus, even keeping the use conditions identical, two different cribs likely will show wear and tear at varied rates.

13. Crib Mattress Standards/Regulations

(Comment 18)—Some commenters expressed satisfaction that ASTM has begun developing a separate safety standard for mattress fit, and they stated their expectation that the CPSC would mandate the voluntary ASTM standard when it is finalized. One comment, submitted on behalf of several organizations and individuals, expressed concern about health and environmental risks that the commenters believed could be associated with the use of certain flame retardants or other potentially harmful chemical agents in the manufacture of crib mattresses. It suggested that the CPSC "ensure that a standard or regulation for crib mattresses address both health and environmental risks that potential hazardous chemicals could pose to infants."

(Response 18)—We already have regulations pertaining to the flammability of mattresses, mattress pads, and mattress sets (*see* 16 CFR parts 1632 and 1633). Issues regarding flame retardants and other chemicals that may be applied to mattresses are beyond the scope of this rulemaking.

14. International Standards

(Comment 19)—One commenter suggested that the CPSC use international standards, or the relevant parts of them, as a basis for our regulation. These include the relevant international standards or technical regulations, such as the Health Canada, EN (European Nation), or ISO (International Standards Organization) crib standards.

(Response 19)—CPSC staff has reviewed, compared, and considered a variety of crib standards/regulations, including the three identified by the commenter. In addition, CPSC staff reviewed the Australian/New Zealand crib standard and three voluntary standards, one published by Underwriters Laboratories (which is no longer an active standard), and the two ASTM standards. The CPSIA specifically requires the Commission to promulgate a safety standard that is substantially the same as, or more stringent than, any voluntary standards. The Commission chose the appropriate ASTM voluntary standards for cribs to be the basis for the CPSC's crib regulations.

CPSC staff's review of the international standards or regulations identified vast differences. Thus, assuming that the commenter sought internationally harmonized requirements, even if we were to adopt an international standard or regulation, the differences in the international standards and regulations would not have resulted in harmonization across multiple jurisdictions. The ASTM voluntary standard recently adopted one requirement (the slat/spindle strength requirement) that was based on a similar requirement in the EN standard and two requirements (the cycle test and the mattress support impact test) that are almost identical to ones found in the Health Canada regulation. Other requirements in the ASTM standards are equivalent to requirements in some of the other international regulations.

Regardless, section 104(b) of the CPSIA requires us to promulgate regulations that are substantially the same as voluntary standards or more stringent than such voluntary standards if we determine that the more stringent standards would further reduce the risk of injury associated with durable nursery products. Section 104(b) of the CPSIA does not mention international harmonization of standards. We believe that the ASTM standards, with the specified modifications, are the most encompassing and robust crib standards and are thus "more stringent" than the ASTM standards alone.

15. Concern About Continually Replacing Cribs

(Comment 20)—Some commenters, consisting of child care centers, expressed concern that they would need to replace their stock of cribs every time that ASTM changes its full-size or non-full-size crib standards.

(Response 20)—Neither the CPSIA nor the CPSC's crib standards would require replacement of cribs whenever ASTM revises F 406 or F 1169. The CPSIA does require that all cribs that are manufactured, offered for sale, provided for use, or otherwise placed in the stream of commerce meet the crib standards issued by the CPSC. The CPSC's proposed crib standards reference ASTM F 406–10a and ASTM F 1169–10; however, the federal standards do not change automatically whenever ASTM revises its voluntary standards. Rather, to change the federal crib standards, we would need to engage in notice and comment rulemaking procedures and refer to a subsequent version of the ASTM standards.

16. Continued Use of Cribs by Consumers

(Comment 21)—One commenter suggested that we include in an Enforcement Policy a clarification that consumers can continue to use cribs that conform to ASTM standards in effect in 2010.

(Response 21)—We intend to distribute information and education materials in connection with issuance of the crib standards and will consider such a clarification as part of those materials. Nothing in the CPSIA, or in the crib standards, requires consumers to replace their cribs with cribs that comply with the new crib standards. The CPSIA requires action by those who manufacture, sell, lease, or otherwise distribute cribs in commerce, and by child care centers and places of public accommodation.

17. Miscellaneous Clarifications About Use of Certain Cribs/Play Yards

(Comment 22)—A few commenters asked for clarification or made incorrect interpretations of the proposed rule or the CPSIA. These comments mostly dealt with the requirements as they would apply to child care centers. One commenter asked if she would no longer be able to use wooden cribs or play yards. Another commenter incorrectly understood that consumers would be

required to replace their cribs, and she objected to this.

(Response 22)—The CPSIA and the crib standards do not dictate the kind of sleeping environment—full-size crib, non-full-size crib, or play yard—that a child care center must provide. Further, the crib standards do not dictate the type of material from which a crib must be made (*e.g.,* wooden, metal, or plastic). The CPSIA does require that any rigid crib, whatever it is made of, comply with either the full-size or non-full-size crib standard. Finally, nothing in the CPSIA, or in CPSC's crib standards, would require consumers to replace their cribs with cribs that comply with the new crib standards.

18. Testing by Firewalled Labs

(Comment 23)—Several consumer groups suggested that the Commission not accept any "firewalled labs" to do testing for compliance with the crib standards because cribs "should meet the highest safety standards."

(Response 23)—Section 102(a)(2) of the CPSIA generally requires that manufacturers and private labelers of children's products (such as cribs) that are subject to a children's product safety rule submit samples of their products for testing by a third party for compliance to applicable children's product safety rules. Section 102(f)(2)(D) of the CPSIA allows the Commission to accredit a third party conformity assessment body (often referred to as a "testing laboratory" or "lab") that is owned, managed, or controlled by a manufacturer or private labeler as a third party testing lab if it meets certain requirements. Such testing labs are known as "firewalled" labs. If a firewalled lab meets the necessary requirements, its testing should be equivalent to testing conducted by any other third party testing lab. Thus, section 102 of the CPSIA does not prohibit the use of firewalled labs.

19. Formaldehyde Standards for Wood Products Act

(Comment 24)—One commenter stated that composite woods used in cribs should comply with the Formaldehyde Standards for Wood Products Act (Pub. L. 111–199) and that the CPSC should require that all cribs using composite wood be tested for compliance to these standards.

(Response 24)—The Formaldehyde Standards for Wood Products Act was enacted on July 7, 2010. It amends the Toxic Substances Control Act and establishes formaldehyde emission standards for hardwood, plywood, medium density fiberboard, and particle board that is sold, supplied, offered for sale, or manufactured in the United States. (The Act provides numerous exemptions from these standards.) The standards are to be administered by the U.S. Environmental Protection Agency (EPA). The law makes no specific mention of cribs. However, it appears that if cribs are made of the types of wood subject to this law, the formaldehyde emission standards would apply to them. If manufacturers have questions about the applicability of the emission standards to their cribs, they should contact the EPA.

20. Soft Bedding

(Comment 25)—One commenter supported the proposed crib standards and suggested that the Commission also look into regulating soft infant bedding products, such as bumper pads.

(Response 25)—As noted in the staff's briefing package that accompanied the proposed rule, extra bedding in cribs accounted for the majority of infant deaths in cribs or other sleeping products, but there are no performance requirements for cribs that can address this issue. (*See* page 12 of CPSC staff's briefing package for the proposed rule at: *http://www.cpsc.gov/library/foia/foia10/brief/104cribs.pdf.*) Education and information may be a more appropriate way to address the hazards associated with extra bedding. For instance, the recently released CPSC video on safe sleeping, (*http://www.cpsc.gov/cpscpub/prerel/prhtml11/11021.html.*), is an example of an educational tool designed to bring more awareness to new parents of the dangers of extra or soft bedding.

21. Slat Strength Test Changes for Folding Crib Sides

(Comment 26)—One commenter noted that the spindle/slat testing procedure does not consider testing crib sides that fold either for access to the occupant or for storage and transport and that, as written in the proposed standard, the test method does not specify testing procedures for such segmented sides. The commenter suggested adding the following language for the full-size and non-full-size crib standards: "For cribs incorporating folding or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately as described above."

(Response 26)—CPSC staff worked in cooperation with the ASTM task group, which created the language suggested by the commenter, to address this issue. Although the defined testing requirements in the proposed rule would work adequately for a crib side with no moving segments, it would not define clearly testing procedures for segmented sides. The intent of the slat strength test is to verify that the crib slats can withstand 80 lbf. If a crib side includes a hinge or other folding mechanism, the force applied to the slat could be transferred to the hinge and unintentionally test the structural integrity of the hinge and/or hinge attachment. We have not received reports of any incidents regarding crib sides with hinges or other folding mechanisms. The final rule includes new provisions in both the full-size and non-full-size crib standards, based on the language provided by the commenter, to clarify the spindle/slat testing procedure for cribs with folding or movable sides.

22. Definition of Folding vs. Movable Sides

(Comment 27)—One commenter asked about the difference between movable sides and folding sides as defined in the voluntary full-size crib standard, ASTM F 1169–10.

(Response 27)—ASTM F 1169–10 defines a folding side as a side or part of a side that folds or pivots in order to provide easier access to an occupant. An example of this is a crib with a drop-gate design, where the top portion of one side folds over by use of a hinge or hinges. A movable side is also a side that is used to provide easier access to an occupant and is any design other than a folding side.

23. Rocking Crib Test Procedure

(Comment 28)—One commenter asked how we plan to apply the proposed crib standard to cribs that are built with rockers, a design that is not addressed explicitly by ASTM F 1169–10. The commenter noted that such a product could be a "super-sized" cradle or rocking bassinet, whose interior dimensions meet that of a full-size crib, or perhaps a glider-style crib. The commenter stated that it would make sense for the crib to be arrested during testing so that the crib does not rock, but the commenter felt that this was not clear in the proposed rule.

(Response 28)—We find that the current language in the standard is sufficient and clearly states that, for each dynamic test requirement, the crib must be mounted rigidly prohibiting or arresting any movement of the crib during all phases of the test procedure. Furthermore, it would be intuitive for test laboratories that a rocking crib must be secured to arrest any motion in the vertical or horizontal direction. Manufacturers and test labs have been

manufacturing and testing non-full-size rocking cribs for some time now, and we are not aware of any clarity requested or needed for testing existing non-full-size rocking cribs or potentially newly-designed full-size rocking cribs.

24. ASTM Provision Concerning Retightening Screws and Bolts

(Comment 29)—Numerous commenters supported the proposed rule's exclusion of the provision in ASTM F 1169–10 concerning retightening of screws between tests, noting that it will enhance crib safety. One commenter, however, disagreed with exclusion of the hardware retightening provision. The commenter stated that the dynamic tests, namely the shake test, vertical mattress support impact test, and the crib side rail impact test are designed to simulate and accelerate the use and abuse of the crib. The commenter noted that, "absent test data to support a contrary position, tightening of the screws is consistent with the ASTM requirements and CPSC's own historic test practices." One commenter stated that CPSC staff has not had the time to evaluate the efficacy of not removing the retightening allowance.

(Response 29)—We strongly disagree with the commenter opposing exclusion of the hardware retightening provision. It is true that the purpose of accelerated life cycle tests is to accelerate the degradation rate of a product under known use conditions. However, the accelerated tests that are required in both the full-size and non-full-size crib standards are not overly stringent. The combination of the shake test (to simulate a child standing and shaking the top of a side rail), the vertical mattress support impact test (child jumping), the crib side rail impact test (child climbing outside of rail), and the slat/spindle strength test (child and/or sibling falling against or kicking slats) comprise a laboratory simulation of a lifetime of use. The shake test parameters are based on a lifetime of use of only 18 months, or use by just one child. The majority of cribs are used for two and three children, and some are in use for 15 years or longer. Furthermore, the accelerated life cycle tests include test parameters for foreseeable use of the product. Foreseeable use includes a child shaking the side rails, jumping on the mattress, climbing on the outside of the side rails, or falling or kicking the crib slats.

As for the commenter's statement that CPSC staff has not had the time to evaluate the efficacy of not removing the retightening allowance, we disagree. First, we conducted initial tests to verify the effects of the vertical mattress support impact and crib side rail impact tests on fasteners loosened during the cyclic side shake test. We intentionally backed out fasteners one-quarter and one-half turn, chosen at random on three full-size and two non-full-size cribs, prior to mattress support and side impact testing. In summary, the side rail impact test severely affected fasteners that lost their seated preload, approximately one-half turn and greater. Fasteners that were loosened less than one-half turn maintained sufficient preload to withstand the side impact test vibrations applied to the lower rail. If the fasteners that loosened after the crib side impact test had been retightened beforehand, a potentially dangerous condition, such as a hazardous gap created by loosened hardware, would have gone unnoticed.

Second, we recently had the opportunity to evaluate each proposed performance requirement by participating in the testing of a full-size crib according to the full-size crib standard. Test results showed that the forces exerted on the crib sides during the shake test are not significantly detrimental to loosening hardware. After completion of the shake test on the test crib, two fasteners were noted to have backed out, one about one-eighth of a turn, and one close to one-half a turn. Neither fastener backed out enough to be considered noncompliant with the test requirement. In addition, these two fasteners did not back off any further after the mattress support and crib side impact testing. However, after the crib side impact test, another fastener, a wing nut securing the mattress support, backed off several turns, creating about a three millimeter separation, which is noncompliant with the requirement. Therefore, the crib ultimately failed due to a primary component attached by a screw that separated more than one millimeter. It is important to note that the assembly envelope around the wing nuts was confined severely by the proximity of the mattress support frame to the side slats. This made it difficult to ensure that adequate torque was applied during crib assembly. Results such as these reemphasize the importance of not allowing retightening of fasteners during testing, because it is foreseeable that a consumer will have similar difficulty tightening a fastener in a confined space.

It is also important to note that ASTM F 1196–10 and F 406–10a include a new hardware and fasteners requirement, which requires that crib hardware include a locking device or method for impeding loosening. This will reduce further the need for the retightening allowance, especially with crib designs that utilize fasteners that are difficult to access.

In summary, we strongly disagree with the request to allow retightening of fasteners. The majority of crib side rail corners are attached with one screw. Loosening just one screw can result in subsequent detachment of the side rail corner, creating a hazardous gap. There have been at least 10 fatalities where loose screws have contributed to the death of a child. After drop-sides, loose screws are the second highest cause of fatalities associated with the structural integrity of cribs. It is important that fasteners remain secure during the useful life of the crib.

25. Captive Hardware

(Comment 30)—Some commenters suggested that the hardware used for assembly remain captive in the key structural components when a crib is disassembled to reduce the chance of losing the hardware and of owners subsequently substituting inappropriate hardware for the hardware that was provided originally with the crib.

(Response 30)—Captive hardware typically includes a threaded insert with a captive screw on the mating component. A few of the advantages of captive hardware include: Prevention of lost hardware, accurate and repeatable assembly of primary structural components, and ease of assembly. Crib designs using captive hardware, especially for primary components, such as side rails, could minimize the chance of screws loosening, allowing components to detach and create an entrapment hazard. In addition, captive hardware could: (1) Make assembly of cribs easier; (2) minimize the chance of a consumer replacing a lost screw with an incorrect or improper substitute; and (3) reduce the chance of a consumer misassembling the crib.

Although, there appear to be many advantages to using captive hardware on cribs, there are several disadvantages as well. First, if a captive screw ever becomes damaged or is inadvertently bent or pulled from an external force while in the disassembled state, it may be difficult or impossible to reassemble the crib component with the damaged screw or to remove and reinstall a replacement captive screw. Second, requiring captive hardware to attach a mattress support could result in more complicated designs or extra hardware because one main component of a full-size crib, the mattress support, typically is designed to be installed in different positions (levels).

Although the advantages of using captive hardware may seem to outweigh the disadvantages, we conclude that it is premature to mandate the use of captive hardware. We encourage manufacturers and ASTM to investigate the use of captive hardware systems on cribs and note that some manufacturers already are employing or considering using such designs.

26. Test Mattress for Non-Full-Size Crib Mattress Support Test

(Comment 31)—One commenter expressed concern about the requirement for non-full-size cribs to conduct the mattress support testing (dynamic impact) with a specific test mattress for each product, as opposed to conducting this test with the mattress supplied with each crib. The commenter was concerned that testing with such a mattress may be less stringent than testing with the mattress supplied with the product. The commenter also was concerned that the provision could require test labs to have multiple test mattresses to suit all different dimensions of non-full-size cribs. This, the commenter stated, could increase the time and costs of testing.

The commenter recommended using the mattress supplied with the product in the dynamic testing. Alternatively, the commenter suggested: (1) stating in the final rule that a test mattress be large enough to accommodate the impactor to be used in the test, provided the test mattress does not shift in any way during testing or (2) specifying a smaller test mattress that would accommodate all non-full-size cribs currently for sale in commerce, with such dimensions as 18" × 18" × 3."

(Response 31)—In some instances, it may be true that testing non-full-size cribs with a thicker test mattress may be less stringent than testing with the mattress supplied with the product. However, we feel it is more important to use a standard size test mattress for test repeatability between testing facilities. Crib mattresses, especially mattresses provided with non-full-size cribs, are typically entry-level price point mattresses. Foam and mattress stitch variability is inherently high throughout the mattress industry. Furthermore, the mattress thickness, foam density, and other mattress characteristics determine the amount of energy that is transferred to the mattress support system. If a standard test mattress is not required, it is foreseeable that the same non-full-size crib with a supplied one-inch mattress may pass at one test laboratory, but fail at another, due solely to the inherent variability in the mattress manufacturing process.

As for the commenter's concern regarding the potential delay in specifying and ordering a test mattress to correctly fit the non-full-size crib being tested, this issue could be addressed easily if the manufacturer includes a test mattress in the crib's bill of materials at the design stage. This will ensure that all crib components, including the test mattress, are procured at the same time. Thereafter, the test mattress will be available for testing, when needed, eliminating any additional testing delays or increased costs by the test laboratories.

As for the commenter's concern regarding the use of a test mattress just large enough to accommodate the impactor used during the mattress impact test, in general, using any test mattress that is smaller than the interior surface area of the crib will be more stringent than using a mattress equivalent to the crib's interior surface area. A smaller test mattress will transfer more energy into the mattress support system. Specifically, using the 18 inches x 18 inches x 3 inches mattress pad as an example, the impact head, about 8 inches across, when positioned 2 inches from the sides in a corner will hit the test mattress such that it overlaps the midplane or geometric center of the test mattress. Therefore, the test mattress foam will sustain more damage than a larger mattress. Unless replaced for each test, it will soften, thereby transmitting more energy into the mattress support structure. CPSC staff believes that using an undersized mattress will mean less repeatability from lab to lab and different force distributions experienced on each crib.

Once a crib mattress standard is developed, which would diminish the variability currently inherent in the mattress manufacturing process, testing non-full-size cribs with their supplied mattresses may be more workable. However, for the present, we feel that it is more important to ensure repeatability between test laboratories by requiring the same vertical mattress impact test for both full-size and non-full-size cribs.

27. Replacement Mattresses in Non-Full-Size Cribs

(Comment 32)—Several commenters argued for modifying the warning on non-full size cribs, which states, in part: "Use ONLY mattress/pad provided by manufacturer * * *" and instead use language that does not specify the manufacturer of the replacement mattress, because some manufacturers make mattresses for other manufacturers' products. One commenter supported an immediate change in the language in the warning, and other commenters supported a language change only after a separate mattress standard has been developed.

(Response 32)—The non-full-size crib standard requires all non-full-size cribs to be sold with their own mattress. These comments only relate to a warning label about replacement mattresses, and do not suggest changing the requirement for the mattress supplied with the non-full-size crib. We agree that replacement mattresses made by manufacturers other than the supplier of the non-full-size crib can achieve a satisfactory fit, because there are many common sizes among non-full-size cribs. Furthermore, we agree that, without alternatives, consumers may resort to homemade bedding surfaces when they need to replace a mattress. Pads that are "designed for" a given crib will simulate all dimensions (edge contours, overall area, density, and thickness) of the original mattress supplied by the manufacturer. A mattress with the dimensions necessary for eliminating hazardous gaps in the crib can be manufactured satisfactorily by anyone, not just the original manufacturer. We believe it would be better to address this issue after a mattress standard has been created.

(Comment 33)—A commenter stated that, "If the CPSC mandates that consumers 'use only the mattress/pad provided by the manufacturer' then retailers will be inclined to stop offering alternative mattresses/pads."

(Response 33)—The final rule does not mandate what mattress a consumer can use, and it does not prohibit the sale of replacement mattress pads. The standard simply requires a warning label on the product. The label mentioned by the commenter has been part of the ASTM standard for non-full-size cribs since 1997, and JPMA-certified non-full-size cribs have displayed that warning since that time. The commenter does not provide any data or evidence to support the contention that retailers will stop offering alternative mattresses/pads. Consequently, we will wait to revise this warning label until after a mattress standard has been created, as suggested by other commenters.

28. Misassembly

(Comment 34)—Several commenters suggested that products should be designed so that the consumer-assembled parts cannot be misassembled. They suggested that all parts of a crib should fit only in the correct orientation, and that if

misassembled, the crib would be unusable.

(Response 33)—This suggestion originates from reports of fatal incidents, wherein a crib side was installed upside-down. We have considered such a requirement for the standard, but it would be difficult to implement. Any part of a product can be misassembled, and there are also certain parts of cribs that can be safely used in any orientation. Manufacturers could resort to more preassembly of crib components to meet this commenter's suggestion, but due to the size of an assembled crib and its components, any preassembly would likely be very limited in nature and thus would not solve the problem.

The requirement to make a crib unusable when a part is misassembled is not feasible because consumer modifications and misassemblies could be clever and forceful. Questions to consider include: Can the potential misassembly involve consumer use of hand tools and off-the-shelf fasteners? What if the misassembled part is redrilled to make it fit? How can a manufacturer make a part unusable if misassembled, when the test lab is allowed to ignore the manufacturer's instructions?

It would be difficult, perhaps impossible, to devise a reliable method for testing such a requirement. The testing permutations needed to prove the utility of some parts in all possible configurations would increase the number of tests that would have to be performed, because each part would have to be tested in every possible position. Although we agree that the principle of making parts oriented in only one direction is sound, the testing needed to prove the inability to use the part makes testing the requirement impractical. The requirement in the standard to clearly mark the manufacturer's recommended installation orientation addresses the problem and highlights the design principle for manufacturers.

29. Utility of Drop-Side Cribs

(Comment 35)—One commenter claimed that drop-side cribs are necessary for some caregivers because some caregivers are shorter. The commenter also suggested that professional child care environments should be allowed to use drop-side cribs because infants are supervised constantly when they are in the crib, and the cribs are checked routinely for safety.

(Response 35)—Although we agree that people who are shorter in stature may have more difficulty when placing infants into cribs than people who are taller, the standard does not prevent crib designers from making cribs that have sides that lower in some manner to help access the crib interior. Cribs with a gate that swings downward on a piano hinge commonly are available and meet the requirements of the standard. Other designs that raise and lower the side of the crib are possible. These alternative designs provide the same convenience as traditional drop-side cribs.

As for the commenter's argument regarding supervision of infants in professional care environments, we agree that professional child care environments generally have a higher level of supervision than the average residential child care environment. However, cribs are designed with the idea that children can be left in them unsupervised. With respect to routine safety checks, CPSC staff does not recommend relying on human behavior for safety, when a design change is available that can eliminate a hazard. Within the field of prevention science, behavioral solutions are always the last choice when designing for safety, because humans are fallible.

30. Fall Hazards

(Comment 36)—A few commenters expressed concern about hazards associated with falls from cribs. These commenters agreed that it is not appropriate to lower the age recommendation or increase the crib side heights. However, the commenters urged the Commission to research these issues and develop innovative solutions, including thorough public education efforts, to limit hazards when children climb out of cribs. Another commenter recommended that the CPSC and ASTM consider setting a maximum crib height, as measured from the top rail to the floor.

(Response 36)—We acknowledge that injuries resulting from crib-related falls rank high in terms of the number of incidents. The new crib standards contain labeling requirements, but not any design or performance requirements, to address this hazard. When discussing height, some distinctions must be made. The side height of a crib is the height from the top of the mattress support (for full-size cribs) in its lowest position, to the lowest part of the top rail. This dimension has a minimum that is set by each crib standard. For instance, it is 26 inches for full-size cribs. This minimum height is required to help prevent children from climbing out of the crib. One also can measure the crib height, which is measured from the floor to the lowest part of the top rail. Neither the CPSC nor ASTM set a requirement for this measurement (which is the measurement to which the commenter refers).

Setting a maximum crib height will not reduce the number of incidents of children climbing and falling out of cribs (because that is dictated by the side height). Therefore, a maximum crib height will not prevent injuries. A maximum crib height could reduce, perhaps, the severity or number of injuries. Side height requirements for full-size cribs specify a minimum of 26 inches between the top of the mattress support in its lowest position, and the top of the lowest rail. Thus, even if the mattress support was on the floor, the minimum fall distance would be 26 inches, which still can result in an injury. No maximum crib height will eliminate injuries from falls, and setting an arbitrary number above 26 inches as a maximum height would be design restrictive.

Many non-drop-side cribs have lower overall heights than the average traditional drop-side crib. We took measurements of 48 drop-side cribs and 15 non-drop-side cribs and found the following:

Crib type	*Crib height*
Drop-side cribs	33″ to 43″.
Non-drop-side cribs ...	32″ to 39.75″.

Based on this sample, non-drop-side crib heights do not appear to be higher, but are at, or below, traditional drop-side crib heights. A shorter crib height would require fewer construction materials and could result in lower crib weight (which could reduce associated shipping costs). Thus, crib manufacturers may be inclined to offer cribs with shorter heights. We believe that the availability of cribs with shorter heights may increase, because the clearance formerly needed under the crib for the operation of drop-sides no longer would be necessary.

31. Crib Side Heights

(Comment 37)—A commenter claimed that crib manufacturers now are using the bare minimum side heights and that, when drop-sides were allowed, many manufacturers exceeded the minimum side height, thereby preventing some falls. The commenter did not include data to support this assertion that crib manufacturers are reducing the side height now that they are no longer making drop-side cribs.

(Response 37)—Measurements of various cribs taken by CPSC staff show that there are some drop-side cribs and some non-drop-side cribs that just meet the minimum side height requirement

and there are some drop-side cribs and non-drop-side cribs that have greater-than-minimum side heights.

The minimum side height requirement in the crib standard was developed with an intended user in mind (a child under the height of 35 inches). Even so, there always will be a certain population of children who will be capable of climbing out of a crib, even cribs with a side height greater than what is required by the crib standards. If the overall average side height of cribs decreased to the minimum side height required in the standard, and inadvertently resulted in a higher frequency of children climbing out, CPSC staff believes that the likelihood of serious injury is lessened by the reduction in the overall fall height due to shorter crib heights (based on the sample of cribs examined by CPSC staff).

F. Changes to Proposed Rule

1. Full-Size Crib Standard

The Commission proposed incorporating ASTM F 1169–10 with one modification: Excluding the provision, section 6.12, that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test. Like the proposal, the final rule incorporates by reference ASTM F 1169–10 with the modification to exclude the hardware retightening provision. The final rule makes one additional modification to ASTM F 1169–10, modifying the spindle/slat testing provision in 7.7.1 of the ASTM standard in order to clarify how to test a crib with folding or movable sides. The final rule adds a sentence to the end of section 7.7.1 of ASTM F 1169–10, which states: "For cribs incorporating folding or moveable sides for purposes of easier access to the occupant, storage, and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately." This change responds to a comment that the CPSC received on the proposed rule (*see* section E of the preamble for discussion of the comment and further explanation of the need for this change). Also, ASTM recently voted to approve adding this language when it next revises ASTM F 1169.

2. Non-Full-Size Crib Standard

The Commission proposed incorporating ASTM F 406–10 with several modifications to address non-full-size cribs. The proposed rule would make four modifications and two editorial changes to ASTM F 406–10. Most proposed changes were intended to make the non-full-size crib standard more consistent with the full-size crib standard. The proposed modifications were: (1) Replacing the mattress support performance requirement in ASTM F 406–10 with the requirement that is in the ASTM full-size crib standard; (2) changing the side impact test in ASTM F 406–10 to make it identical to the requirements in the ASTM full-size crib standard; (3) adding a requirement for movable side latches that is similar to a provision in previous versions of the ASTM F 406 standard; and (4) specifying the order for conducting structural tests, as in the full-size crib standard. The proposed editorial changes were: (1) Excluding provisions in ASTM F 406–10 that cover only play yards; and (2) moving the recordkeeping provision from the appendix of ASTM F 406–10 to the general requirements section. *See* 75 FR 43308 (July 23, 2010).

The final rule incorporates ASTM F 406–10a by reference, with certain modifications. This subsequent version of the ASTM non-full-size crib standard, approved on October 15, 2010, and published in November 2010, includes most of the changes that were in the proposed rule. Specifically, ASTM F 406–10a contains the recordkeeping provision in the general requirements section (now in section 5.20); the mattress support impact performance requirement (now included in sections 6.14, and 8.7); proposed changes to the side impact test (now included in sections 6.16, and 8.9); the provision for movable side latch testing (now included in section 6.13.1); and the order of testing (now in section 6.8). Some provisions in ASTM F 406–10a are worded slightly differently than the language in the proposed rule. These differences in wording are editorial. The proposed modifications that are not adopted in ASTM F 406–10a are those that excluded provisions specifically related to play yards. Thus, the final rule continues to exclude these play yard-specific provisions.

In addition to the differences between ASTM F 406–10 and F 406–10a discussed in the preceding paragraph, there are a few other differences between the two versions (which therefore result in differences between the CPSC's proposed non-full-size crib standard and the final standard). Most differences between the two versions are editorial; for example, the revised standard rearranges the order of some sections and makes minor wording changes to make the language more consistent with the full-size crib standard (ASTM F 1169–10). The CPSC has reviewed these changes and concludes that only one change is a substantive change that would reduce safety. ASTM F 406–10a adds the provision that was (and continues to be) in the ASTM standard for full-size cribs, which requires the retightening of screws and bolts between tests. The CPSC's final rule for non-full-size cribs excludes this provision, just as the CPSC's final rule for full-size cribs does.

The final rule for non-full-size cribs also adds language concerning testing of cribs with folding sides as in the final rule for full-size cribs. The final rule for non-full-size cribs includes one other modification that was not in the proposal. This change modifies the language for a warning label that cautions against placing netting or other covers over the product. The current wording in ASTM F 406–10a mentions only "play yards." The final rule substitutes the word "product" for "play yard," thus making the warning label also applicable to non-full-size cribs. The Commission did not receive any comments on this labeling issue. However, it is related to the effort in the CPSC's proposed and final non-full-size crib standards to exclude provisions that relate only to play yards. Recently, ASTM approved these two changes (concerning folding cribs and the warning label regarding netting and covers) for its next version of ASTM F 406, but they are not in ASTM F 406–10a.

3. Effective Date

The Commission proposed a 6-month effective date (as measured from the date of publication of a final rule in the **Federal Register**). The final rule maintains the 6-month effective date but establishes two compliance dates: 6 months for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation which have a 24-month compliance date. As discussed in sections E.8 and 10 of this preamble, the Commission received several comments from child care providers describing the impact that the crib standards could have on them, and the Commission believes that places of public accommodation face similar issues. The final rule provides a longer compliance period for these entities to allow them additional time to purchase compliant cribs and to absorb the costs of meeting the standards.

4. References in 16 CFR 1500.18

When the Commission proposed the crib standards, it also proposed revising 16 CFR 1500.18(a)(13) and (14), which state that full-size cribs that do not comply with 16 CFR part 1508 and non-full-size cribs that do not comply with

16 CFR part 1509 are banned hazardous substances under the FHSA. We proposed to replace the references to 16 CFR parts 1508 and 1509 with references to the CPSC's new crib standards which will be codified at 16 CFR parts 1219 and 1220. As noted earlier in this preamble, elsewhere in this issue of the **Federal Register**, we are revoking the crib regulations that the Commission previously issued under the FHSA and are codified at 16 CFR parts 1508 and 1509. Given that section 104(b) of the CPSIA changed the regulation of cribs (and other durable infant or toddler products) from the FHSA to the CPSA, we have determined that it will reduce confusion to remove the provisions in 16 CFR 1500.18(a)(13) and (14) altogether rather than changing the references. This is consistent with the revocation of 16 CFR parts 1508 and 1509.

G. Assessment of Voluntary Standards ASTM F 1169–10 and ASTM F 406–10a and Description of the Final Rule

1. Section 104(b) of the CPSIA: Consultation and CPSC Staff Review

Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. This consultation process for the full-size and non-full-size crib standards has involved: An ANPR, a public crib roundtable, and in-depth involvement with ASTM. CPSC staff's consultations with ASTM are ongoing.

2. Description of the Final Standard for Full-Size Cribs, Including Changes to the Requirements of ASTM F 1169–10

The Commission believes that the provisions of ASTM F 1169–10 are effective to reduce the risk of injury associated with full-size cribs. The modifications to ASTM F 1169–10 strengthen the ASTM standard. The final rule incorporates by reference ASTM F 1169–10 with two modifications:

- Exclusion of the provision in the voluntary standard concerning retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test; and
- Addition of language to the voluntary standard clarifying how to conduct the slat/spindle strength test on a crib with folding or movable sides.

a. Scope, Compliance Dates, and Definitions (§ 1219.1)

Like the proposal, the final rule states that this part establishes a consumer product safety standard for new and used full-size cribs. In accordance with section 104(c) of the CPSIA, this section states that the standard applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size crib. This section provides a compliance date of 6 months (as measured from the date of publication of this final rule in the **Federal Register**) for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation which will have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs for use that comply with the standard. As discussed in section H of this preamble, due to the number of compliant cribs that child care centers and places of public accommodation will need to provide for use, the final rule provides an additional 18 months for them to meet the full-size crib standard.

Section 1219.1(c) defines full-size baby crib as defined in ASTM F 1169–10 as a bed, with certain interior dimensions, that is designed to provide sleeping accommodations for an infant. In accordance with section 104(c) of the CPSIA, the definition includes cribs in child care facilities and places of public accommodation affecting commerce. This section also provides the definition of "place of public accommodation affecting commerce" specified in section 104(c) of the CPSIA.

b. Requirements for Full-Size Cribs (§ 1219.2)

Incorporation by reference. Like the proposal, the final rule incorporates by reference ASTM F 1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs.* The final rule requires compliance with the requirements of ASTM F 1169–10, with two modifications.

Modifications to the ASTM standard. The final rule for full-size cribs excludes the provision in section 6.12 of the ASTM standard that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test (§ 1219.2(b)(1) of the CPSC's standard). This is identical to the proposed rule. As discussed in the preamble to the proposal (75 FR at 43314 through 43315), exclusion of this retightening provision strengthens the standard. Conducting the tests without re-tightening the hardware better represents the real use of a crib. Retightening fasteners would sever the chain of accumulated conditioning effects that the crib undergoes during the sequence of tests. Most of the comments that the CPSC received concerning this issue supported the CPSC's exclusion of this provision. Further discussion of the rationale for excluding the hardware retightening provision is provided in section E.24 of this preamble.

The final rule adds one provision for full-size cribs that was not contained in the proposed rule. The final rule adds a sentence to section 7.7.1 of ASTM F 1169–10 to clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (§ 1219.2(b)(2) of the CPSC's standard). The slat strength test is intended to verify that cribs slats can withstand 80 lbf. Without the clarification, conducting the test on a crib that has a hinge or other folding mechanism could result in testing the structural integrity of the hinge rather than the strength of the slats. Thus, the final rule adds the following sentence: "For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage, and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately." The addition of this language strengthens the ASTM standard, because it eliminates an ambiguity about testing this type of crib.

Requirements of ASTM F 1169–10. The final rule incorporates the other requirements of ASTM F 1169–10 without change. These requirements establish a comprehensive standard for the safety of full-size cribs. ASTM F 1169–10 includes definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature. The key provisions of both ASTM standards are outlined in section G.4. of this preamble.

3. Description of the Final Standard for Non-Full-Size Cribs, Including Changes to the Requirements of ASTM F 406–10a

The Commission believes that the provisions of ASTM F 406–10a, with the specified modifications, are effective to reduce the risk of injury associated with non-full-size cribs. The final rule incorporates a version of ASTM F 406 that ASTM approved after the Commission had published its proposed rule and includes most of the modifications that the Commission proposed. These changes make ASTM F 406–10a more consistent with the ASTM standard for full-size cribs, rendering the standard more protective than the previous version. The modifications in the CPSC's final rule

further strengthen the standard. The final rule incorporates by reference ASTM F 406–10a with four modifications that:

- Exclude the hardware retightening provision;
- Add language clarifying how to conduct the slat/spindle test on cribs with folding or movable sides;
- Revise a warning concerning netting or other covers so that it includes non-full-size cribs; and
- Exclude provisions that apply only to play yards.

a. Scope, Compliance Dates, and Definitions (§ 1220.1)

Like the proposal, the final rule states that this part establishes a consumer product safety standard for new and used non-full-size cribs. In accordance with section 104(c) of the CPSIA, this section states that the standard applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size crib. This section provides a compliance date of 6 months for all entities subject to the rule (as measured from the date of publication of this final rule in the **Federal Register**), except for child care facilities, family child care homes, and places of public accommodation which will have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs that comply with the standard. As discussed in section H of this preamble, due to the number of compliant cribs that these entities will need to provide for use, the final rule provides an additional 18 months for them to meet the non-full-size crib standard.

Section 1220.1(c) defines non-full-size baby crib as defined in ASTM F 406–10a and explicitly excludes play yards. (A play yard is defined as "a framed enclosure that includes a floor and has mesh- or fabric-sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.") A non-full-size crib is essentially a crib that has dimensions other than those of a full-size crib, as defined in the full-size crib standard. In accordance with section 104(c) of the CPSIA, the definition includes cribs in child care facilities and places of public accommodation affecting commerce. This section provides the definition of "place of public accommodation affecting commerce" specified in section 104(c) of the CPSIA. It also provides definitions of terms relevant to the definition of non-full-size crib, such as "portable crib" and "play yard."

b. Requirements for Non-Full-Size Cribs (§ 1220.2)

Incorporation by reference. The final rule incorporates by reference ASTM F 406–10a, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.* The final rule requires compliance with the requirements of ASTM F 406–10a, with four modifications.

Modifications to the ASTM standard. The final rule for non-full-size cribs excludes the provision in section 6.10 in the ASTM standard that requires retightening of screws and bolts between the crib side latch test and the mattress support vertical impact test (§ 1220.2(b)(3) of the CPSC standard). This exclusion was not in the proposed rule for the non-full-size crib standard because the proposal referenced ASTM F 406–10, which did not contain the hardware retightening provision. Excluding this provision is consistent with the CPSC's standard for full-size cribs. The same reasons for that exclusion (see part E.24 of this preamble) apply with regard to non-full-size cribs.

The second modification to ASTM F 406–10a adds a sentence to clarify the testing of cribs with folding or movable sides. This modification was not in the proposed rule, but responds to comments on the proposal and is identical to the change in the full-size crib standard. This provision adds a sentence to section 8.10.1 of ASTM F 406–10a to clarify how to conduct the spindle/slat static force test with a crib that has folding or movable sides (§ 1220.2(b)(5) of the CPSC's standard). Addition of this language strengthens the ASTM standard because it eliminates an ambiguity about testing this type of crib.

The third modification to ASTM F 406–10a revises a warning in section 9.4.2.6 of the ASTM standard that cautions against using netting or other covers (§ 1220.2(b)(12) of the CPSC's standard). The modification replaces the words "play yard" with the word "product" because the hazard posed by such covers exists for non-full-size cribs as well as play yards.

The final modifications to ASTM F 406–10a remove the provisions that relate only to play yards (§ 1220.2(b)(1), (2), (4), and (6) through (11) of the CPSC standard). Section 104(c) of the CPSIA distinguishes cribs (both full-size and non-full-size) from other durable infant or toddler products. This different treatment of cribs necessitates that the CPSC establish separate standards for non-full-size cribs and for play yards. In the future, we intend to issue a standard for play yards under section 104(b) of the CPSIA.

Requirements of ASTM F 406–10a. The final rule incorporates the other requirements of ASTM F 406–10a without change. The requirements establish a comprehensive standard for the safety of non-full-size cribs. Like the ASTM standard for full-size cribs, ASTM F 406–10a includes definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature. These requirements are essentially the same as the requirements ASTM F 1169–10 establishes for full-size cribs. The key requirements of both ASTM standards are outlined in the following section of this preamble.

4. Principal Requirements of Both ASTM Crib Standards

Both the full-size and non-full-size crib standards incorporate by reference the relevant ASTM crib standards, with certain modifications explained above. The principal requirements are the same in both ASTM standards. These are:

- Dynamic impact testing of the mattress support system—intended to address incidents involving collapse or failure of mattress support systems. The 2010 standards updated the tests to address fatigue of mattress support brackets, support hardware, and mattress support due to children jumping in cribs.
- Impact testing of side rails and slat strength/integrity testing—intended to prevent slats and spindles from breaking and/or detaching during use. The requirements were made more stringent for the 2010 standards. The modification was intended to prevent entrapments by reducing the likelihood of slat/spindle breakage and the gaps that accompany them.
- Mattress support system testing—intended to ensure that the mattress support does not become detached from the frame, potentially resulting in a fall.
- Latching mechanism tests—intended to ensure that latching and locking mechanisms work as intended, preventing unintended folding while in use. Also requires that they be used with drop gates and movable sides.
- Crib side configurations—intended, in part, to limit movable (drop) sides. Addresses the numerous incidents related to drop-side failures.
- Label requirements—the required warnings were reordered in the 2010 full-size crib standard to emphasize fall hazards.
- Openings requirement for mattress support systems—a new requirement for the full-size crib 2010 standard that

addresses gaps in the mattress support system to minimize the possibility of entrapment.

- Requirements for wood screws and other fasteners—a new requirement for the 2010 standards that addresses hazards that exist when wood screws are the primary method of attachment. Also includes other fastener requirements to address incidents related to loose hardware and poor structural integrity.
- Cyclic testing—a new requirement for the 2010 standards that addresses incidents involving failures of non-drop-side hardware and poor structural integrity. This requirement was taken from the Canadian standard and simulates long-term shaking of the product by a child.
- Misassembly issues—a new requirement for the 2010 standards where it must either be impossible to misassemble key elements or those elements must have markings that make it obvious when they have been misassembled.
- Test requirement for accessories—a new requirement for the 2010 standards that is intended to address any cribs that may now, or in the future, include accessories, such as bassinets or changing tables.
- Crib interior dimensions—a new requirement for the 2010 standards that is taken directly from the CPSC's mandatory regulation and is intended to ensure that all full-size cribs have the same interior dimensions.
- Component spacing—a new requirement for the 2010 standards that is taken directly from the CPSC's mandatory regulation and is intended to prevent child entrapment between both uniformly and non-uniformly-spaced components, such as slats.

5. The Final Crib Standards Address the Principal Hazards Related to Cribs

This section summarizes how the standards for full-size and non-full-size cribs address the principal crib-related hazards that the CPSC has identified through its review of incidents involving cribs.

The crib standards address structural failures of cribs that are related to drop-side failures through a requirement that the sides of a crib be fixed in place and have no movable sections less than 20 inches from the top of the mattress support (effectively eliminating drop sides). The standards address problems with non-drop-side hardware and poor structural integrity through requirements for screw fasteners, locking components, and the cyclic side (shake) test. Loosening of wood screws and other fasteners also has led to crib incidents. The standards address these hazards through the wood screw requirements of 16 CFR parts 1508 and 1509 (which are now in ASTM F 1169–10 and ASTM F 406–10a), restricting the use of wood screws as primary fasteners; prohibiting use of wood screws in structural elements that a consumer would need to assemble; and imposing stricter requirements for the use of threaded metal inserts and other metal-threaded fasteners. Problems with the structural integrity of cribs and hardware issues (such as loosened joints, detached sides and overall poor structural integrity) are addressed by the cyclic side (shake) test, which simulates a child's lifetime shaking of the crib. The test applies a cyclic force (9,000 vertical and then 9,000 horizontal load cycles using 27 lbf) at the midpoint of each top rail, end, and side of the crib. To address mattress-related issues (such as, entrapments between a mattress support and a crib structure, and mattress support structural failures), the crib standards include a mattress impact cyclic test that consists of dropping a 45-pound mass (20 kg) repeatedly every 4 seconds onto a polyurethane foam test mattress covered in vinyl and supported by the mattress support system. The crib standards address crib slat disengagement (which can result in entrapment) by specifying that any crib side with slats must be tested (previously the number of sides was not specified and manufacturers could test just one side). The crib standards address broken or dislocated slats, which can cause a gap of approximately 5 inches, by making the slat/spindle strength test more stringent, requiring a set number of slats to withstand an 80-pound load. The crib standards address misassembly issues by including a requirement which states: "Crib designs shall only allow assembly of key structural elements in the manufacturer's recommended use position or have markings that indicate their proper orientation. The markings must be conspicuous in the misassembled state."

H. Effective Date

The Administrative Procedure Act ("APA") generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposed that the standard would become effective six months after publication of a final rule. The Commission invited comments regarding the sufficiency of a 6-month effective date for the crib standards, which are discussed in section E.10 of this preamble.

Based on review of the comments, the final rule provides a 6-month effective date (as measured from the date of publication of this final rule in the **Federal Register**) with two compliance dates: a 6-month compliance date for all entities subject to the rule, except for child care facilities, family child care homes, and places of public accommodation, which have 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to provide cribs that comply with the standards. This approach alleviates concerns that there may not be a sufficient supply of cribs that meet the new standards for these entities to provide compliant cribs within a 6-month effective date. Providing this additional period of time for these entities addresses their concerns about the costs of compliance by allowing additional time for them to locate funding and to absorb the costs of the rule. This approach still requires manufacturers and retailers (as well as other entities selling, leasing or otherwise providing cribs) to supply compliant cribs within 6 months just as the Commission had proposed. Providing tiered compliance dates should allow for an orderly process of supply, so that cribs are first manufactured and made available for sale before child care facilities, family child care homes, and places of public accommodation, which must purchase compliant cribs, are required to comply with the standards. This approach also will not delay the availability of cribs in stores for individual consumers to purchase, which would have been the case if the rule established a longer uniform effective date to accommodate the impact on child care facilities, family child care homes, and places of public accommodation. By setting a compliance date of 24 months from the date of publication of this final rule in the **Federal Register**, the Commission intends that any such entity that comes into being after the compliance date must comply with this rule when it begins operating.

An additional reason underlies the Commission's decision to create a separate compliance date for child care facilities, family child care homes, and places of public accommodation. It is unprecedented for the Commission to promulgate a rule containing a mandatory standard that not only sets product performance requirements but also places responsibility for compliance with the rule, in part, on users or providers of the product in an occupational setting. We are required to do so in this case, however, because

Congress singled out cribs for special treatment in the CPSIA.

Even though certain of the other durable infant products on which we will be promulgating mandatory standards may also be found in child care or other settings covered by section 104 of the CPSIA, it is only cribs failing to meet the mandatory standard that are required to be replaced by certain statutorily defined users and providers by a date to be determined by the Commission.

Of course, manufacturers of products are accustomed to meeting performance standards. Our understanding is that most crib manufacturers have been following this rulemaking and the attendant ASTM voluntary standards proceedings very closely, if not participating in them directly. Their numbers, though, are relatively few. In comparison, there are an estimated 59,000 child care and family home care providers and an estimated 53,000 public accommodations covered by this rule, many of whom may be wholly unaware of its consequences.

During this rulemaking, the issues that have been raised as part of the record by child care providers apply, in our view, to all users or providers of cribs described in sections 104(c)(2)(B) and (D) of the CPSIA. While we had no comments from operators of public accommodations, they likely will face the same difficulties as child care providers in complying in a timely manner with the new crib standard.

For instance, the number of complying cribs that will have to be manufactured to meet the new standard, just for those cribs needed in the child care setting, is, in our estimation, at least ten times more than those facilities usually buy in one year (cribs, on average, are normally on a 10-year replacement cycle). This surge in demand is in addition to the cribs that will, upon this rule becoming effective, need to be replaced by owners or operators of public accommodations, who would have otherwise not necessarily done so during that period. Whether enough complying cribs can be made in just one year's time to meet this increased need, on top of the normal annual number of cribs required by parents, is uncertain. All crib users and providers will be buying from the same finite pool of new complying cribs, but certain of those purchasers will be doing so pursuant to the added responsibilities placed upon them by this rule, as required by the CPSIA. The expense of replacing all of their non-complying cribs will weigh more heavily on the less affluent providers, whether they are child care facilities or public accommodation facilities.

Given these realities, and the Commission's strong desire to ensure implementation of the rule is consistent with the statute's goal of providing safer sleep environments for those children using cribs, the Commission believes it is prudent to take all reasonable steps to try to provide adequate time for there to be a sufficient supply of complying cribs to meet demand, and for child care facilities, family child care homes, and places of public accommodation to obtain complying cribs before the penalties that could be imposed on them for failure to do so become effective. Therefore, the Commission is establishing a compliance date for those persons of 24 months (as measured from the date of publication of this final rule in the **Federal Register**) for them to provide compliant cribs. This gives affected persons an additional 18 months beyond the effective date that was suggested in the proposed rule to replace their noncomplying cribs. The Commission will also use this time to attempt to educate all those individuals and entities affected of their responsibilities under the law so they can plan for the replacement of their cribs in an orderly and timely fashion.

The Commission strongly encourages all child care facilities, family child care homes and public accommodation facilities to begin replacing their cribs with compliant cribs as quickly as the market allows, starting with the oldest ones first, as our experience has shown that the longer cribs are used, the more hazards they present to the children placed in them. Every day that a child is in an unsafe crib, or any unsafe sleep environment for that matter, puts that child at risk of serious injury or death. Every person who provides cribs in a child care setting or as part of the furnishings in a public accommodation has a responsibility to provide the safest possible environment for the children using those cribs.

I. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and prepare an initial regulatory flexibility analysis. 5 U.S.C. 603. The RFA further requires that agencies consider comments they receive on the initial regulatory flexibility analysis and prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities and identifying alternatives that could reduce that impact. *Id.* 604. This section summarizes the staff's final regulatory flexibility analyses for the full-size and non-full-size crib standards, which is provided at Tabs A and B of the staff's briefing package.

1. Full-Size Cribs

a. The Market for Full-Size Cribs

As mentioned in section B.2 of this preamble, CPSC staff estimates that there are currently 68 manufacturers or importers supplying full-size cribs to the U.S. market. Of those that could be categorized, 10 are domestic importers; 42 are domestic manufacturers; 7 are foreign manufacturers; and 2 are foreign importers. CPSC staff estimates annual sales of new cribs to be about 2.4 million (could be an underestimate if new mothers buy more than one crib). CPSC staff estimates that there are currently approximately 591 models of full-size cribs compared to approximately 81 models of non-full-size cribs. Thus, approximately 88 percent of crib models are full-size cribs. Applying this percentage to the number of cribs sold annually results in a rough estimate of 2.1 million full-size cribs sold each year.

JPMA, the major U.S. trade association representing juvenile product manufacturers and importers, runs a voluntary certification program for several juvenile products. Approximately 30 firms (44 percent) supply full-size cribs to the U.S. market that have been certified by JPMA as compliant with the ASTM voluntary standard F 1169–09. Additionally, 15 firms claim compliance, although their products have not been certified by JPMA. The regulatory flexibility analysis assumes that the 45 firms that provide cribs that are certified to, or claim to be compliant with, earlier ASTM standards, will remain compliant with ASTM standard F 1169–10.

As noted previously, section 104 of the CPSIA operates such that when the Commission's crib standards take effect, they will apply to retailers of both new and used full-size cribs and to child care facilities and places of public accommodation, such as hotels, which provide full-size cribs to their patrons. Based on public comments received from child care centers in response to the proposed rule, it appears that child care centers typically use a mix of full-size and non-full-size cribs, but primarily non-full-size cribs. However, CPSC staff still assumes that places of public accommodation tend to provide non-full-size cribs to their customers, as opposed to the more unwieldy full-size cribs. The number of firms that may be selling or providing full-size cribs is unknown, but may be drawn from

approximately 24,985 retail firms (at least 5,292 of which sell used products); 59,555 firms supplying child care services; and 53,021 locations offering public accommodations to the public that may be supplying new or used full-size cribs.

b. Impact on Small Businesses

There are approximately 68 firms currently known to be producing or selling full-size cribs in the United States. Based on Small Business Administration (SBA) guidelines, which consider a manufacturer to be small if it has 500 or fewer employees and an importer to be small if it has 100 or fewer employees, 48 of these firms (36 domestic manufacturers, 10 domestic importers, and 2 firms with unknown sources of supply) are small. There are probably additional unknown small manufacturers and importers operating in the U.S. market.

According to SBA guidelines, retailers and service providers, such as child care centers and places of public accommodation, are considered small if they have $7 million or less in annual receipts. Approximately 93 percent of all retailers have receipts of less than $5 million, with an additional 3 percent having receipts between $5 million and $9.99 million. Excluding firms with receipts of between $5 million and $7 million, yields an estimated 23,236 small retail firms. Some portion of these retail firms would be affected by the final rule because only a small percentage of these small firms actually sell full-size cribs. Thus, the number of small retail firms affected will be far fewer than 23,236. Among child care service providers, approximately 98 percent have receipts of less than $5 million, with an additional 0.9 percent having receipts between $5 million and $9.99 million. This suggests that roughly 58,364 small child care firms (of 59,555) could be affected.

i. Small Manufacturers

The impact of the standard for full-size cribs on small manufacturers will differ based on whether their products comply with ASTM standard F 1169–10. Of the 36 small domestic manufacturers, 24 produce cribs that are certified by JPMA or that they claim are in compliance with the voluntary standard. The impact on the 24 compliant firms is not expected to be significant. It seems unlikely that any of these products will require modification to meet the CPSC standard. Should any modifications be necessary, the modification would likely be minor (such as more effective screws or screw combinations).

The CPSC standard could have a significant impact on one or more of the 12 firms that are not compliant with the voluntary standard, because their products might require substantial modifications. The costs associated with these modifications could include costs for product design, development and marketing staff time, and product testing. There may also be increased production costs, particularly if additional materials are required. The actual cost of such an effort is unknown, but could be significant, especially for the two firms that rely primarily or entirely on the production and sale of full-size cribs and related products, such as accompanying furniture and bedding, and for a third firm that produces only one other product. However, the impact of these costs may be diminished if they are treated as new product expenses that can be amortized.

The scenario described above assumes that only those firms that produce cribs that are certified by JPMA or that claim ASTM compliance will pass the voluntary standard's requirements. This is not necessarily the case. CPSC staff has identified many cases in which products that are not certified by JPMA actually are compliant with the relevant ASTM standard. To the extent that this is true, the impact of the CPSC standard will be less significant than described.

ii. Small Importers

While 4 of the 10 small importers are not compliant with the voluntary standard, all would need to find an alternate source of full-size cribs if their existing supplier does not come into compliance with the new requirements of the CPSC standard. The cost to importers may increase, and they, in turn, may pass on some of those increased costs to their customers. Some importers may respond to the rule by ceasing to import cribs that do not comply. However, the impact of such a decision may be lessened by replacing the noncompliant crib(s) with complying products or other juvenile products. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue, given that most small importers import a variety of products.

iii. Small Retailers and Child Care Centers

The CPSIA requires that all full-size cribs sold (or leased) by retailers or provided by child care centers to their customers comply with the CPSC's full-size crib rule. This means that retailers, most of whom are small, will need to verify that any full-size cribs in their inventory (that they intend to sell or lease after the effective date), and any that they purchase in the future, comply with the regulation prior to offering the cribs for sale. CPSC staff believes that most retailers, particularly small retailers, do not keep large inventories of cribs. With an effective date six months after publication of the final rule, retailers of new products should have sufficient notification and time to make this adjustment with little difficulty. The situation for retailers of used cribs is more complicated, however, because they may not always be able to determine whether the full-size cribs they receive comply with the new CPSC standard. For these affected retailers, it may be simpler to discontinue the sale of used full-size cribs. If cribs represent a small portion of the products they sell, then the impact of the rule on these firms may be limited.

Child care centers, family child care homes, and places of public accommodation must provide compliant cribs for their customers. The rule provides a 6-month effective date with an additional 18-month compliance period for these entities to meet the standards. This longer period to comply gives them additional time to purchase and replace their cribs that do not comply with the final rule. Without a longer period for compliance, the impact on these entities would be greater, particularly for those that would have to replace all of their cribs at once.

Based on data provided by the comments, it appears that the average child care center has between 4 and 45 cribs, fewer than half of which are likely to be full-size. Each crib costs approximately $500. Therefore, if 25 percent of the cribs that must be replaced are full-size cribs, then replacement for an individual child care center could run from $500 to as high as $5,500. The total one-time cost to child care centers, the majority of which are small, of replacing all of their full-size cribs is estimated to be approximately $97 million nationwide. Providing child care centers, family child care homes, and places of public accommodation with 24 months to comply with the new crib standards will reduce the impact on these entities.

There are additional considerations concerning the one-time costs child care providers face. Some costs may be passed on to customers through small increases in the rates child care providers charge. Child care providers would recoup these costs over an extended period, while the initial outlay for new cribs would be much more immediate. Additionally, as several commenters noted, child care centers

are limited in how much of the costs can be passed on to their customers. For example, one commenter stated that approximately 35 percent of the children in their care—more than 150,000—receive some form of state subsidy, and another provider stated that approximately one-third of the children in their care receive some subsidy. Raising rates above what customers can bear has the potential to deprive families of child care or force them into alternative child care arrangements that may not be subject to the final rule. The latter possibility has the potential for safety risks in excess of those that currently exist in child care centers.

Some centers could opt to replace their full-size cribs with play yards, which are less expensive to purchase (typically $100–$200) than full-size cribs, thereby spreading replacement costs over a longer period. While this would reduce the impact of the final rule, the alternative of providing play yards may be limited due to state licensing laws. The CPSC does not advocate the use of play yards over cribs, but acknowledges that the choice of play yards instead of cribs may be an option for some child care providers.

iv. Alternatives

Under section 104 of the CPSIA, one alternative that could reduce the impact on small entities would be to make the voluntary standard mandatory without any modifications. Adopting the current full-size crib voluntary standard without any changes potentially could reduce costs for 12 of the 36 small manufacturers and 4 of the 10 small importers that are not compliant already with the voluntary standard. However, these firms still will require substantial product changes in order to meet the voluntary standard. Because the CPSC's changes add little to the overall burden of the rule, adopting the voluntary standard without any changes will not offset significantly the burden that is expected for these firms.

Another way to reduce the impact on small firms would be to allow more time for such entities to comply with the final rule by providing a longer effective date for all entities. This would allow additional time for small manufacturers and small importers of non-compliant cribs. It could also alleviate inventory issues for small retailers.

A third alternative that could reduce the impact on small firms would be to provide an even longer compliance period for child care centers, family child care homes, and places of public accommodation. Although this would reduce the impact on the smaller of these entities, it would not have any impact on small manufacturers or importers.

2. Non-Full-Size Cribs

a. The Market for Non-Full-Size Cribs

CPSC staff estimates that there are currently at least 17 manufacturers or importers supplying non-full-size cribs to the U.S. market. Five of these firms are domestic importers and 10 are domestic manufacturers. Insufficient information is available to determine whether the remaining firms are manufacturers or importers.

Five firms supply non-full-size cribs to the U.S. market that have been JPMA-certified as compliant with the ASTM voluntary standard. Additionally, two firms claim compliance, although their products have not been certified by JPMA. Therefore, including the firms that claim compliance with the ASTM standard, five manufacturers and one importer have products that are ASTM compliant. Additionally, one of the firms with an unknown source of supply also claims compliance with the ASTM standard. This analysis assumes that firms that are certified or claim to be compliant with earlier ASTM standards will remain compliant with ASTM standard F 406–10a.

As explained in the analysis concerning full-size cribs (section I.1.b. of this preamble), CPSC staff estimates annual sales to households to be about 2.4 million cribs. CPSC staff estimates that there are approximately 81 non-full-size crib models currently being supplied (versus 591 full-size crib models). Therefore, approximately 12 percent of the crib models on the U.S. market are non-full-sized. Applying this to the number of cribs sold annually yields a rough estimate of 293,000 non-full-size cribs sold each year.

As previously noted, section 104 of the CPSIA explicitly makes the crib standards applicable to retailers of both new and used non-full-size cribs and to child care facilities and places of public accommodation, such as hotels that supply non-full-size cribs to their patrons. Based on comments received from child care centers in response to the proposed rule, it appears that child care centers typically use a mix of full-size and non-full-size cribs, with a bias in favor of non-full-size cribs. CPSC staff still assumes that places of public accommodation tend to provide their customers with non-full-size cribs as opposed to full-size cribs. The number of firms that may be selling or providing non-full-size cribs is unknown, but may be drawn from the approximately 24,985 retail firms (at least 5,292 of which sell used products), the 59,555 firms supplying child care services, and the 53,021 locations providing public accommodations. Each of these groups may be supplying new or used non-full-size cribs to the public.

b. Impact on Small Businesses

There are approximately 17 firms currently known to be producing or selling non-full-size cribs in the United States. Based on the SBA's guidelines, which consider a manufacturer to be small if it has 500 or fewer employees and an importer to be small if it has 100 or fewer employees, 14 suppliers are small firms (9 domestic manufacturers and 5 importers). The size of the remaining firms—two with unknown supply sources and one domestic manufacturer—could not be determined. There are probably additional unknown small manufacturers and importers operating in the U.S. market.

As explained in the analysis of the impact of the full-size crib standard, CPSC staff estimates that 23,236 retail firms would be considered small according to SBA's guidelines. Not all of these small firms sell non-full-size cribs. Thus, the number of small retail firms affected will be fewer than 23,236. CPSC staff estimates that using SBA's guidelines, there are approximately 58,364 small child care firms (of 59,555) and 42,437 small hotel firms (of 53,021 locations providing public accommodations) that could be affected by the crib standards.

i. Small Manufacturers

The impact of the CPSC's non-full-size crib standard on small manufacturers will differ based on whether their products are expected to be compliant with ASTM standard F 406–10. Of the nine small domestic manufacturers, five are in compliance with the voluntary standard. The impact on the five compliant firms is not expected to be significant. It seems unlikely that any of these products will require modification to meet the final standard. Should any modifications be necessary, they would be most likely minor (such as more effective screws or screw combinations).

The CPSC's final standard for non-full-size cribs could have a significant impact on one or more of the four firms that are not compliant with the voluntary standard, because their products might require substantial modifications. The costs associated with these modifications could include product design, development and marketing staff time, and product testing. There may also be increased

production costs, particularly if additional materials are required. The actual cost of such an effort is unknown, but could be significant, especially for the one firm that relies on the production and sale of non-full-size cribs and related products, such as accompanying furniture and bedding. However, the impact of these costs may be diminished if they are treated as new product expenses that can be amortized.

The scenario described above assumes that only those firms that produce cribs certified by JPMA or claim ASTM compliance will pass the requirements of ASTM F 406–10a. This is not necessarily the case. CPSC staff has identified many cases in which products not certified by JPMA actually are compliant with the relevant ASTM standard. To the extent that this is true, the impact of the final rule will be less significant than described.

ii. Small Importers

Although four of the five small importers are not compliant with the voluntary standard, all would need to find an alternate source of non-full-size cribs if their existing supplier does not come into compliance with the new requirements of the final standard. The cost to importers may increase and they, in turn, may pass on some of those increased costs to their customers. Some importers may address the rule requirements by ceasing to import cribs that do not comply with the new standard. However, the impact of such a decision may be diminished by replacing the noncompliant cribs with complying products or other juvenile products. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue, given that most small importers import a variety of products.

iii. Small Retailers and Child Care Centers

The CPSIA requires that all cribs sold (or leased) by retailers or provided by child care centers to their customers comply with the CPSC's new crib standards. Thus, retailers will need to verify that any non-full-size cribs in their inventory (that they intend to sell or lease after the effective date), and that any they purchase in the future, comply with the regulation prior to offering the cribs for sale. CPSC staff believes that most retailers, particularly small retailers, do not keep large inventories of cribs. With an effective date six months after publication of the rule, retailers of new products should have sufficient notification and time to make this adjustment with little difficulty. Retailers of used cribs may have difficulty determining whether the cribs they receive comply with the new CPSC standard, and therefore, may discontinue the sale of used non-full-size cribs. If cribs represent a small portion of the products they sell, then the impact of the rule on these firms may be limited.

Child care centers, family child care homes, and places of public accommodation must provide compliant non-full-size cribs for their customers. The rule provides a 6-month effective date (as measured from the date of publication of this final rule in the **Federal Register**) with an additional 18 months compliance period for these entities to meet the standards. This longer period of time to comply with the standards could reduce the impact on small firms. Based on data provided through public comments, it appears that the average child care center has between 4 and 45 cribs, more than half of which are likely to be non-full-size. Each crib costs approximately $500. Therefore, if 75 percent of the cribs that must be replaced are non-full-size cribs, then replacement for an individual child care center could run from $1,500 to as high as $16,500. The total one-time cost to child care centers, the majority of which are small, of replacing all of their non-full-size cribs is estimated to be approximately $290 million nationwide. Providing child care centers, family child care homes, and places of public accommodation with 24 months (as measured from the date of publication of this final rule in the **Federal Register**) to comply with the new crib standards will reduce the impact on them. According to 2007 U.S. Census data, there are 53,021 establishments providing public accommodations. Assuming that all of these establishments provide an average of about three non-full-size cribs for use by their clientele, as many as 160,000 cribs might need to be replaced at a cost of about $500 per crib, or approximately $80 million. This may be an overestimate as not all places of public accommodation provide cribs to their customers, but some portion of those that do will replace those cribs when the rule becomes effective.

As discussed in the analysis of the full-size crib standard, there are additional considerations concerning the one-time costs for child care providers. Some costs may be passed on to customers through small increases in the rates child care providers charge (although the expenditure for new cribs would be far more immediate). Child care centers may have limited ability to pass these costs on to their customers, particularly in light of the number of children in child care who received some form of state subsidy. Although some child care centers could replace their non-full-size cribs with less expensive play yards (typically $100–$200), this alternative may not be available to some child care centers if state licensing laws require use of cribs rather than play yards.

Some hotels may provide a few non-full-size cribs for their customers. The number of cribs at any one establishment is likely to be low, especially because of the likelihood that parents traveling with young children will bring along sleep products, such as play yards or portable cribs, for their children. As with child care centers, this is a one-time cost for firms that, over time, likely can be passed on to customers. Firms, particularly smaller ones, may opt to reduce the replacement costs by ceasing to provide cribs to their customers, replacing only some cribs, or providing play yards instead of non-full-size cribs. Therefore, it is unlikely that the rule will have a significant impact on a substantial number of firms that provide these cribs in places of public accommodation. The Commission believes that because places of public accommodation, like child care centers, will need to purchase compliant cribs to provide to their customers, the rule establishes a 24 month compliance date (as measured from the date of publication of this final rule in the **Federal Register**) for them to provide compliant cribs as well.

iv. Alternatives

The same alternatives for reducing the impact of the full-size crib standard also apply to reducing the impact of the non-full-size crib standard. One alternative is to make the voluntary standard mandatory with no modifications. Adopting the current voluntary standard without any changes potentially could reduce costs for four of the nine small manufacturers and four of the five small importers who are not already compliant with the voluntary standard. However, these firms still will require substantial product changes in order to meet the voluntary standard. Since the changes add little to the overall burden of the rule on small manufacturers, adopting the voluntary standard with no changes will not offset significantly the burden that is expected for these firms. Adopting the voluntary standard with no modifications could reduce the impact on small retailers and some child care providers.

Another alternative that could reduce the impact on small firms would be to allow more time for such entities to comply with the final rule by providing

a longer effective date for all entities that are subject to the rule. This would allow additional time for small manufacturers and small importers of non-compliant cribs. It could also alleviate inventory issues for small retailers. A third alternative that could reduce the impact on small firms would be to provide an even longer compliance period for child care centers, family child care homes, and places of public accommodation. Although this would reduce the impact on the smaller of these entities, it would not have any impact on small manufacturers or importers.

J. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion.

K. Paperwork Reduction Act

This rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, the preamble to the proposed rule (75 FR at 43319 through 43321) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments concerning the information collection burden of the proposal, and the final rule does not make any changes to that burden. We have applied to the U.S. Office of Management and Budget (OMB) for a control number for this information collection, and we will publish a notice in the **Federal Register** providing the number when the agency receives approval from OMB.

L. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) Section 104(b) of the CPSIA refers to the rules to be issued under that section as "consumer product safety rules," thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

M. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. Section 104(b)(1)(B) of the CPSIA refers to standards issued under that section as "consumer product safety standards." By the same reasoning, such standards also would be subject to section 14 of the CPSA. Therefore, any such standard would be considered a consumer product safety rule, to which products subject to the rule must be certified.

Because full-size cribs and non-full-size cribs are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. Elsewhere in this issue of the **Federal Register**, we have issued a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test to the new crib standards. The Commission previously issued a notice of requirements for accreditation to test to the existing crib standards (16 CFR parts 1508 and 1509) in the **Federal Register** of October 22, 2008 (73 FR 62965). (Baby cribs also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104 of the CPSIA).

List of Subjects

16 CFR Part 1219

Consumer protection, Incorporation by reference, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

16 CFR Part 1220

Consumer protection, Incorporation by reference, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping, Toys.

■ Therefore, the Commission amends Title 16 CFR chapter II as follows:

■ 1. Add part 1219 to read as follows:

PART 1219—SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

Sec.

1219.1 Scope, compliance dates, and definitions.
1219.2 Requirements for full-size baby cribs.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008).

§ 1219.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1219 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Full-size baby crib* means a bed that is:

(i) Designed to provide sleeping accommodations for an infant;

(ii) Intended for use in the home, in a child care facility, a family child care home, or place of public accommodation affecting commerce; and

(iii) Within a range of ± 5.1 cm (± 2 in.) of the following interior dimensions: The interior dimensions shall be 71 ± 1.6 cm (28 ± 5/8 in.) wide

as measured between the innermost surfaces of the crib sides and 133 ± 1.6 cm (52⅜ ± ⅝ in.) long as measured between the innermost surfaces of the crib end panels, slats, rods, or spindles. Both measurements are to be made at the level of the mattress support spring in each of its adjustable positions and no more than 5 cm (2 in.) from the crib corner posts or from the first spindle to the corresponding point of the first spindle at the other end of the crib. If a crib has contoured or decorative spindles, in either or both of the sides or ends, the measurement shall be determined from the largest diameter of the first turned spindle within a range of 10 cm (4 in.) above the mattress support spring in each of its adjustable positions, to a corresponding point on the first spindle or innermost surface of the opposite side of the crib.

(2) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

§ 1219.2 Requirements for full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each full-size baby crib shall comply with all applicable provisions of ASTM F 1169–10, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved June 1, 2010. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *http://www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) Comply with the ASTM F 1169–10 standard with the following additions or exclusions:

(1) Do not comply with section 6.12 of ASTM F 1169–10.

(2) Instead of complying with section 7.7.1 of ASTM F 1169–10, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

■ 2. Add part 1220 to read as follows:

PART 1220—SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS

Sec.

1220.1 Scope, compliance dates, and definitions.

1220.2 Requirements for non-full-size baby cribs.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008).

§ 1220.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used non-full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1220 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Non-full-size baby crib* means a bed that is:

(i) Designed to provide sleeping accommodations for an infant;

(ii) Intended for use in or around the home, for travel, in a child care facility, in a family child care home, in a place of public accommodation affecting commerce and other purposes;

(iii) Has an interior length dimension either greater than 139.7 cm (55 in.) or smaller than 126.3 cm (49 ¾ in.), or, an interior width dimension either greater than 77.7 cm (30⅝ in.) or smaller than 64.3 cm (25⅜ in.), or both;

(iv) Includes, but is not limited to, the following:

(A) *Portable crib*—a non-full-size baby crib designed so that it may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume it occupies when it is used.

(B) *Crib pen*—a non-full-size baby crib with rigid sides the legs of which may be removed or adjusted to provide a play pen or play yard for a child.

(C) *Specialty crib*—an unconventionally shaped (circular, hexagonal, etc.) non-full-size baby crib incorporating a special mattress or other unconventional components.

(D) *Undersize crib*—a non-full-size baby crib with an interior length dimension smaller than 126.3 cm (49¾ in.), or an interior width dimension smaller than 64.3 cm (25⅜ in.), or both.

(E) *Oversize crib*—a non-full-size baby crib with an interior length dimension greater than 139.7 cm (55 in.), or an interior width dimension greater than 77.7 cm (30⅝ in.), or both.

(v) Does not include mesh/net/screen cribs, nonrigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets, and bassinets (also known as junior cribs).

(2) *Play yard* means a framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.

(3) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

§ 1220.2 Requirements for non-full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F 406–10a, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved October 15, 2010. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, PO Box 0700,

West Conshohocken, PA 19428; telephone 610–832–9585; *http://www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) Comply with the ASTM F 406–10a standard with the following additions or exclusions:

(1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F 406–10a.

(2) Do not comply with section 5.16.2 of ASTM F 406–10a.

(3) Do not comply with section 6.10 of ASTM F 406–10a.

(4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products,* of ASTM F 406–10a.

(5) Instead of complying with section 8.10.1 of ASTM F 406–10a, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

(6) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F 406–10a.

(7) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F 406–10a.

(8) Do not comply with section 8.14 through 8.14.2 of ASTM F 406–10a.

(9) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F 406–10a.

(10) Do not comply with sections 8.16 through 8.16.3 of ASTM F 406–10a.

(11) Do not comply with section 9.3.2 through 9.3.2.4 of ASTM F 406–10a.

(12) Instead of complying with section 9.4.2.6 of ASTM F 406–10a, comply with the following warning requirement:

(i) Child can become entrapped and die when improvised netting or covers are placed on top of product. Never add such items to confine child in product.

(ii) [Reserved].

PART 1500 [AMENDED]

■ 3. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016; the Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008).

■ 4. In § 1500.18 remove paragraphs (a)(13) and (14).

Dated: December 17, 2010.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–32178 Filed 12–27–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1508 and 1509

Revocation of Requirements for Full-Size Baby Cribs and Non-Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing this rule to revoke its existing regulations pertaining to full-size and non-full-size cribs because, elsewhere in this issue of the **Federal Register**, the Commission is issuing consumer product safety standards for cribs that will further reduce the risk of injury associated with these products under section 104 of the CPSIA. The new consumer product safety standards for cribs will include the requirements that have been in 16 CFR parts 1508 and 1509 for full-size and non-full-size cribs. To eliminate duplication, the Commission is removing 16 CFR parts 1508 and 1509 entirely.

DATES: Effective June 28, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher Melchert, Division of Regulatory Enforcement, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7588; *cmelchert@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. What regulations is the CPSC revoking?

The CPSC first published the full-size crib regulation, 16 CFR part 1508, in 1973 (38 FR 32129 (Nov. 21, 1973)) and amended it in 1982. The CPSC published the regulation for non-full-size cribs, 16 CFR part 1509, in 1976 (41 FR 6240 (Feb. 12, 1976)), and amended it in 1982. Both standards contain requirements pertaining to dimensions, spacing of components, hardware, construction and finishing, assembly instructions, cutouts, identifying marks, warning statements, and compliance declarations. In addition, 16 CFR part 1509 contains a requirement regarding mattresses.

B. Why is the CPSC revoking the regulations pertaining to cribs?

The Consumer Product Safety Improvement Act of 2008, Public Law 110–314 ("CPSIA"), was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Elsewhere in this issue of the **Federal Register**, the Commission is issuing safety standards for full-size and non-full-size cribs under the authority of section 104 of the CPSIA. These new standards adopt the voluntary standards developed by ASTM International (formerly known as the American Society for Testing and Materials), which are more stringent in some respects than the current applicable standards, and include ASTM F 1169–10, "*Standard Consumer Safety Specification for Full-Size Baby Cribs,*" and ASTM F 406–10a, "*Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.*"

The crib standards that the CPSC is publishing elsewhere in this issue of the **Federal Register** incorporate all of the requirements currently found in 16 CFR parts 1508 and 1509. Consequently, the requirements found at 16 CFR parts 1508 and 1509 have become redundant. The Commission, therefore, is revoking 16 CFR parts 1508 and 1509 in their entirety.

The Commission emphasizes that the revocation of 16 CFR parts 1508 and 1509 would have no substantive effect on crib safety. The requirements from 16 CFR parts 1508 and 1509 still apply to full-size and non-full-size cribs, but are

part of new consumer product safety standards to be codified at 16 CFR parts 1219 and 1220.

C. Comment on the Proposal

In the **Federal Register** of July 23, 2010 (75 FR 43107), the Commission published a notice of proposed rulemaking proposing to revoke 16 CFR parts 1508 and 1509. We received one comment on the proposal. The comment agreed with the proposed revocation, stating: "The proposed new regulations will be more thorough and comprehensive than the old regulations. It is simply logical to revoke the old outdated 16 CFR parts 1508 and 1509."

We agree with the comment, and therefore, we are revoking 16 CFR parts 1508 and 1509 entirely.

D. Paperwork Reduction Act

This rule would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

E. Environmental Considerations

This rule falls within the scope of the Commission's environmental review regulation at 16 CFR 1021.5(c)(1), which provides a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for rules that revoke product safety standards.

F. Effective Date

The final rule to revoke 16 CFR parts 1508 and 1509 becomes effective on June 28, 2011. This date corresponds to the effective date of the new mandatory standards developed for full-size and non-full-size cribs.

List of Subjects

16 CFR Part 1508

Consumer protection, Cribs and bassinets, Infants and children, Reporting and recordkeeping requirements.

16 CFR Part 1509

Consumer protection, Cribs and bassinets, Infants and children, Reporting and recordkeeping requirements.

■ For the reasons stated above, and under the authority of section 3 of the CPSIA and 5 U.S.C. 553, the Consumer Product Safety Commission removes 16 CFR parts 1508 and 1509 entirely.

PART 1508—[REMOVED]

■ 1. Under authority of section 3 of the CPSIA, part 1508 is removed.

PART 1509—[REMOVED]

■ 2. Under authority of section 3 of the CPSIA, part 1509 is removed.

Dated: December 17, 2010.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–32179 Filed 12–27–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0064]

16 CFR Parts 1219 and 1220

Third Party Testing for Certain Children's Products; Full-Size Baby Cribs and Non-Full-Size Baby Cribs: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to specific CPSC regulations relating to full-size and non-full-size baby cribs. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR parts 1219 and/or 1220 are effective December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to safety standards for full-size and non-full-size baby cribs, which appears elsewhere in this issue of the **Federal Register**. The standards for full-size and non-full-size baby cribs will be codified at 16 CFR parts 1219 and 1220 respectively. The standards contain the test methods that conformity assessment bodies will use to assess full-size and non-full-size baby cribs. The Commission is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the full-size and non-full-size baby crib standards become effective in six months. The details regarding those limited circumstances can be found in part IV of this document below.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with "all other children's product safety rules," this notice of requirements is limited to the test methods identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned: "All Other Children's Product Safety Rules," but the body of the statutory

requirement refers only to "other children's product safety rules." Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as requiring a notice of requirements for "all" other children's product safety rules, rather than as a notice of requirements for "some" or "certain" children's product safety rules. However, whether a particular rule represents a "children's product safety rule" may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are "children's product safety rules." The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be "children's product safety rules."

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories." The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA), and the scope of the accreditation must include testing for any of the test methods identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance With 16 CFR Part 1501 (Small Parts Regulations)," dated November 2008 and available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf*.)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at *http://www.cpsc.gov/about/cpsia/labaccred.html.*

In the **Federal Register** of October 22, 2008 (73 FR 62965), the Commission published a notice of requirements for the accreditation of third party conformity assessment bodies to test children's products for conformity with the then-existing CPSC regulations for full-size baby cribs at 16 CFR part 1508 and for non-full-size baby cribs at 16 CFR part 1509. Elsewhere in this issue of the **Federal Register**, the Commission is revoking 16 CFR parts 1508 and 1509, so testing to those regulations will no longer be required. The revocation of those regulations will become effective on June 28, 2011, and so, on that date, we will no longer accept applications from third party conformity assessment bodies for CPSC acceptance to test for conformity with 16 CFR parts 1508 and/or 1509.

As stated in part I of this document, the Commission, elsewhere in this issue of the **Federal Register**, is issuing new standards for full-size and non-full-size baby cribs that will be codified at 16 CFR parts 1219 and 1220, respectively. This notice of requirements is effective on December 28, 2010. The final rule announcing the Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs is effective on June 28, 2011. The effect of these twin publications is that each manufacturer (including the importer) or private labeler of a product subject to 16 CFR parts 1219 or 1220 must have any such product manufactured on or after June 28, 2011, tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR parts 1219 or 1220 based on that testing.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (*see* section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and the scope of the accreditation must expressly include testing to the test method for full-size and/or non-full-size baby cribs included in 16 CFR parts 1219 and/or 1220, Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs. A true copy, in English, of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of full-size and/or non-full-size baby cribs to support certification by the manufacturer or private labeler of compliance with the test methods identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party

conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body. The Commission's order must also find that accrediting the firewalled conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Web site at *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that ultimately may seek acceptance as a firewalled third party conformity assessment body may initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body then will be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children's products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing to the New Safety Standards for Full-Size and Non-Full-Size Baby Cribs Prior to Their Effective Date

Elsewhere in this issue of the **Federal Register**, the Commission is publishing new safety standards for full-size and non-full-size baby cribs, which will be codified at 16 CFR parts 1219 and 1220, respectively. The effect of this notice of requirements and the final rule is that each manufacturer (including the importer) or private labeler of a product subject to 16 CFR parts 1219 or 1220 must have any such product manufactured on or after June 28, 2011 tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR parts 1219 or 1220 based on that testing.

To ease the transition to the new standards and avoid a "bottlenecking" of products at conformity assessment bodies at or near the effective date of 16 CFR parts 1219 and 1220, the Commission will accept certifications based on testing that occurred prior to the effective date of the new standards in certain prescribed circumstances. However, any such testing must comport with all CPSC requirements, including:

1. At the time of product testing, the product [1] was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC–MRA accreditation body at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission has accredited by order at or before the time the product was tested, even if the order did not include the test methods specified in this notice. If the third party

[1] The CPSIA requires that certification be based on testing of sufficient samples of the product or samples that are identical in all material respects to the product.

conformity assessment body has not been accredited as a firewalled conformity assessment body by a Commission order, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;

2. The third party conformity assessment body's application is accepted by the CPSC by June 28, 2011, as established by the Commission;

3. The test results show compliance with 16 CFR part 1219 or 16 CFR part 1220;

4. The product was tested on or after July 23, 2010 and before June 28, 2011; and

5. The third party conformity assessment body's accreditation remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for the subject products' respective regulations.

Dated: December 17, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–32180 Filed 12–27–10; 8:45 am]

BILLING CODE 6355–01–P

Federal Register

Tuesday,
December 28, 2010

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Seven Brazilian Bird Species as Endangered Throughout Their Range; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–IA–2009–0028; 92210–1111–0000–B6]

RIN 1018–AV74

Endangered and Threatened Wildlife and Plants; Listing Seven Brazilian Bird Species as Endangered Throughout Their Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for the following seven Brazilian bird species and subspecies (collectively referred to as "species" for purposes of this rule) under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*): Black-hooded antwren (*Formicivora erythronotos*), Brazilian merganser (*Mergus octosetaceus*), cherry-throated tanager (*Nemosia rourei*), fringe-backed fire-eye (*Pyriglena atra*), Kaempfer's tody-tyrant (*Hemitriccus kaempferi*), Margaretta's hermit hummingbird (*Phaethornis malaris margarettae*), and southeastern rufous-vented ground-cuckoo (*Neomorphus geoffroyi dulcis*).

DATES: This rule becomes effective January 27, 2011.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Endangered Species Program, 4401 N. Fairfax Drive, Suite 400, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2009, we published a proposed rule (74 FR 154) to list the following seven Brazilian bird species—black-hooded antwren (*Formicivora erythronotos*), Brazilian merganser (*Mergus octosetaceus*), cherry-throated tanager (*Nemosia rourei*), fringe-backed fire-eye (*Pyriglena atra*), Kaempfer's tody-tyrant (*Hemitriccus kaempferi*), Margaretta's hermit (*Phaethornis malaris margarettae*), and southeastern rufous-vented ground-cuckoo (*Neomorphus geoffroyi dulcis*)—as endangered under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). All of the above species are found in the Atlantic Forest, with the exception of the Brazilian merganser, which is also found in the Cerrado Biome.

We opened the public comment period on the proposed rule for 60 days, ending October 13, 2009, to allow all interested parties an opportunity to comment on the proposed rule.

We are addressing the seven Brazilian bird species identified above under a single rule for three reasons. First, all of these species are found in the Atlantic Forest Biome and Cerrado Biome; thus, it is reasonable to address them together within a regional conservation perspective. Biomes are large geographic areas such as forests and deserts which share similar climate and geography and consist of similar naturally occurring vegetation and fauna. Second, each of these seven species is subject to similar threats of comparable magnitude. The major threat to these species is the loss and degradation of habitat due to deforestation and other ongoing development practices affecting southeastern Brazil, as well as associated threats due to severely restricted distributions of these species and small, declining populations (such as potential loss of genetic viability). Third, combining species that face similar threats within the same general geographic area into one rule allows us to maximize our limited staff resources, thus increasing our ability to complete the listing process for warranted-but-precluded species.

Previous Federal Actions

On November 28, 1980, we received a petition (the 1980 petition) from Dr. Warren B. King, Chairman, United States Section of the International Council for Bird Preservation (ICBP), to add 60 foreign bird species to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)), including 5 of the 7 Brazilian bird species (black-hooded antwren, cherry-throated tanager, fringe-backed fire-eye, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo) that are the subject of this final rule. Two other foreign species identified in the petition were already listed under the Act. In response to the 1980 petition, we published a substantial 90-day finding on May 12, 1981 (46 FR 26464), for 58 foreign species and initiated a status review.

On January 20, 1984 (49 FR 2485), we published a 12-month finding within an annual review on pending petitions and description of progress on all pending petition findings. In that notice, we found that all 58 foreign bird species from the 1980 petition were warranted but precluded by higher priority listing actions. On May 10, 1985, we published an annual notice (50 FR 19761), in which we continued to find that listing all 58 foreign bird species from the 1980 petition was warranted but precluded. We published additional annual notices on the 58 species included in the 1980 petition on January 9, 1986 (51 FR 996); July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52746); April 25, 1990 (55 FR 17475); November 21, 1991 (56 FR 58664); and May 21, 2004 (69 FR 29354). These notices indicated that the black-hooded antwren, cherry-throated tanager, fringe-backed fire-eye, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo, along with the remaining species in the 1980 petition, continued to be warranted but precluded.

On May 6, 1991, we received a second petition (the 1991 petition) from ICBP to add an additional 53 foreign bird species to the List of Endangered and Threatened Wildlife, including the 2 remaining Brazilian bird species (Brazilian merganser and Kaempfer's tody-tyrant) that are the subject of this rule. In response to the 1991 petition, we published a substantial 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species and initiated a status review. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act (15 each from the 1980 petition and 1991 petition). In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the Brazilian merganser and Kaempfer's tody-tyrant, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1980 and 1991 petitions, including the seven Brazilian bird species that are the subject of this final rule, as published in our annual notice of review (ANOR) on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 ANOR (72 FR 20183, April 23, 2007) identified the listing priority numbers (LPNs) (ranging from 1

to 12) for all outstanding foreign species. The LPNs for the seven Brazilian bird species that are the subject of this final rule are as follows: The black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, and Kaempfer's tody-tyrant are LPN 2; and the Margaretta's hermit and southeastern rufous-vented ground-cuckoo are LPN 3. Listing priorities of 2 and 3 indicate that the subject species and subspecies, respectively, face imminent threats of high magnitude. With the exception of listing priority ranking of 1, which addresses monotypic genera that face imminent threats of high magnitude, categories 2 and 3 represent the Service's highest priorities.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. In that notice, we announced listing to be warranted for 30 foreign bird species, including the seven Brazilian bird species which are the subject of this final rule, and stated that we would "promptly publish proposals to list these 30 taxa."

On September 8, 2008, the Service received a 60-day notice of intent to sue from the Center for Biological Diversity (CBD) claiming violations of section 4 of the Act for the Service's failure to promptly publish listing proposals for the 30 "warranted" species identified in our 2008 ANOR. Under a settlement agreement approved by the U.S. District Court for the Northern District of California on June 15, 2009 (*CBD* v. *Salazar,* 09–CV–2578–CRB), the Service was required to submit to the **Federal Register** proposed listing rules for the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo by July 31, 2009. On August 12, 2009, we published the proposed rule (74 FR 154) to list these species as endangered.

Summary of Changes From the Proposed Rule

This final rule incorporates changes to our proposed listing based on new information and on comments that we received. Specifically, we included new information on recent location data for Brazilian merganser and the cherry-throated tanager. We also updated the population estimate, range, and conservation status on the Kaempfer's tody-tyrant and clarified what is known about the taxonomy of the Margaretta's hermit hummingbird.

Summary of Comments and Recommendations

In the proposed rule published on August 12, 2009 (74 FR 154), we requested that all interested parties submit information that might contribute to the development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on the proposed listings. We received four comments on the proposed rule, including two from peer reviewers and two from the public. One comment from the public expressed support for the proposed listings but provided no substantive information. Based on our request in our proposed rule for information on climate change, this commenter requested that we take climate change into account when evaluating threats to the cherry-throated tanager, and cited Birdlife International's Web site for this species. The science of climate change is still uncertain, particularly with respect to how it will affect the long-term persistence of protected species as well as the quality and quantity of ecosystems upon which they depend. We did evaluate climate change as a threat to all of these species in this final rule (refer to the evaluation under Factor E for each species).

The other comment received from the public was also nonsubstantive—the commenter asked why these seven species should be listed under the Act if they are nonnative to the United States. The Act provides for the listing of any species that qualifies as an endangered or threatened species, regardless of its native range. Protections under the Act that apply to species not native to the United States include restrictions on importation into the United States; sale or offer for sale in foreign commerce; and delivery, receipt, carrying, transport, or shipment in foreign commerce and in the course of a commercial activity. Listing also serves to heighten awareness of the importance of conserving these species among foreign governments, conservation organizations, and the public.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from nine knowledgeable individuals with scientific expertise that included familiarity with these seven species, the geographic region in which the species occur, and conservation biology principles. We received responses from two of the peer reviewers. The peer reviewers generally agreed that the description of the biology and habitat for each species was accurate and based on the best available information. New location data were provided for the Brazilian merganser and the cherry-throated tanager, and we incorporated the information into the rulemaking as appropriate.

Atlantic Forest and Cerrado Biome—Habitat Descriptions

The Atlantic Forest Biome and the Cerrado Biome, in which all of these species occur, are two main ecological regions that exist almost entirely in Brazil. The Atlantic Forest extends along the Atlantic coast of Brazil from Rio Grande do Norte in the north to Rio Grande do Sul in the south, and inland as far as Paraguay and Misiones Province of northeastern Argentina (Morellato and Haddad 2000, pp. 786–787; Conservation International 2007a, p. 1; Höfling 2007, p. 1). The Atlantic Forest extends up to 600 km (373 mi) west of the Atlantic Ocean. It consists of tropical and subtropical moist forests, tropical dry forests, and mangrove forests at mostly low-to-medium elevations less than 1,000 m (3,281 ft); however, altitude can reach as high as 2,000 m (6,562 ft) above sea level. According to Conservation International, less than 10 percent of this habitat remains intact; other estimates are that 7 percent remains intact (Morellato and Haddad 2000, p. 786; Oliveira-Filho and Fontes 2000, p. 794). Based on a number of other estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; Saatchi *et al.* 2001, p. 868; Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; The Nature Conservancy (TNC) 2007, p. 1; World Wildlife Fund 2007, pp. 2–41). In addition to the overall loss and degradation of native habitats within this biome, the remaining tracts of habitat are severely fragmented. The current rate of habitat decline is unknown.

The Cerrado Biome is in central Brazil and is considered one of the most biodiverse savannas in the world (Ratter *et al.* 1997, p. 223; Conservation International 2007b; World Bank 2010). It has an annual rainfall between 800 and 2,000 millimeters (mm) (31 to 79 in). This tropical savannah ecoregion is characterized by woody savanna generally 2–8 m (6–26 ft) in height and well-drained soil. The altitude in this

region is between 300 and 1,200 m (984 and 3,937 ft), and the habitat has specific soil characteristics. Other characteristics of this biome are soil depths of at least 3 m (9.8 ft) and aluminum-rich soils (Schmidt 2008, pp. 3–4).

Species Descriptions

Below is a species-by-species description. The species are described in alphabetical order, beginning with the black-hooded antwren, followed by the Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit hummingbird, and southeastern rufous-vented ground-cuckoo.

I. Black-hooded Antwren (Formicivora erythronotos)

Species Description

The black-hooded antwren measures 10.5 to 11.5 centimeters (cm) (4 to 4.5 inches (in)) (BirdLife International (BLI) 2010d, p. 1; Sick 1993, p. 414). Males are black with a reddish-brown back. They have a black narrow bill and a long tail. The wings are black with three thin white stripes on the wings (wing bars). Females have similar coloring, except they have brown-olive feathers where black feathers appear on males (BLI 2010d, p. 1).

Taxonomy

The black-hooded antwren is a small member of the diverse "antbird" family (Thamnophilidae). The species was previously recognized under the genus *Myrmotherula* (Collar *et al.* 1992, p. 667; Sick 1993, p. 414; BLI 2010d, p. 1).

Habitat and Life History

The black-hooded antwren inhabits lush understories of remnant old-growth and early successional secondary-growth coastal forests, and it may also occur in dense understories of modified restinga (BLI 2010d, p. 1; Tobias and Williams 1996, p. 64). Restinga is a Brazilian term that describes white sand forest habitat consisting of a patchwork of vegetation types, such as beach vegetation; open shrubby vegetation; herbaceous, shrubby coastal sand dune habitat; and dry and swamp forests distributed over coastal plains from northeastern to southeastern Brazil (McGinley 2007, pp. 1–2; Rocha *et al.* 2005, p. 263).

Although the specific habitat requirements of the black-hooded antwren are still unclear, the species is not considered a tropical forest specialist. The black-hooded antwren typically forages in pairs or small family groups and consumes various insects, spiders, and small frogs (Collar *et al.* 1992, p. 667; del Hoyo 2003, p. 616; Sick 1993, p. 405; Tobias and Williams 1996, p. 65). Their foraging zone is in dense vegetation generally between ground level and 3 meters (m) (10 feet (ft)) above the ground, but they are also known to forage in higher vegetation zones up to 7 m (23 ft) above the ground. Females typically lay two eggs in fragile nests resembling small cups made of plant material (*e.g.,* rootlets, stems, moss) that are attached to horizontal branches within roughly 1 m (3.3 ft) of the ground (Collar *et al.* 1992, p. 667; Sick 1993, p. 405). Both sexes help to build the nests, brood clutches, and attend their young.

Range and Distribution

The black-hooded antwren is endemic to the Atlantic Forest Biome in the southeast portion of the State of Rio de Janeiro (BLI 2010d, p. 1; Collar *et al.* 1992, pp. 667). Currently, the only confirmed population is believed to be restricted to remnant patches of forest habitat along roughly 30 kilometers (km) (19 miles (mi)) of coast in southern Rio de Janeiro, near the border with São Paulo (Browne 2005, p. 95; Tobias and Williams 1996, p. 64). However, there have also been recent unconfirmed reports that the species may occur at the State Ecological Reserve of Jacarepiá, located roughly 75 km (47 mi) northeast of the city of Rio de Janeiro (Association for the Defense of the Environment in Jacarepiá (ADEJA) 2007, p. 3; WorldTwitch 2007, p. 12).

Population Estimates

The black-hooded antwren was known from 20 specimens that were purportedly collected in the 1800s in montane forest habitats of central Rio de Janeiro, Brazil. The species had not been reported since that collection until it was rediscovered in 1987 in the Atlantic forest in south Rio de Janeiro (BLI 2010d, p. 1).

The extant population is estimated to be between 1,000 and 2,499 birds, and is fragmented among seven occupied sites, including Bracuí, Frade, São Gonçalo, Taquari and Barra Grande, Ariró, and Vale do Mambucaba. Vale do Mambucaba has the highest known density of pairs (156 pairs per square km (km^2)), followed by Mambucaba (densities of 89 pairs/km^2). There are no known estimates for the other locations, but it is believed that the numbers are few (BLI 2010d, p. 1). At least one of the fragmented populations is believed to be reproductively isolated. The population, as a whole, is also believed to be declining rapidly due to continued loss of habitat (BLI 2010d, pp. 1–3).

Conservation Status

The IUCN considers the black-hooded antwren to be "Endangered," because "it has a very small and severely fragmented range that is likely to be declining rapidly in response to habitat loss" (BLI 2010d, p. 3). The species is also protected by Brazilian law and occurs in the buffer area of Serra da Bocaína National Park (BLI 2010d, p. 2). The species is not listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (*http://www.cites.org*).

II. Brazilian Merganser (Mergus octosetaceus)

Species Description

The Brazilian merganser is described as resembling a cormorant (Sick 1993, p. 163). The species has a distinctive green crest, which extends over the nape of the neck and which is more developed in males (Sick 1993, p. 163). The bird has a white wing speculum and red feet, and is 49–56 cm (19–22 in) in length (BLI 2007a, p. 1). The breast is pale grey with dark markings, and dark grey coloring in the upper breast (BLI 2007a, p. 1).

Taxonomy

The Brazilian merganser was first described by Vieillot in 1817 (Partridge 1956, p. 473). The species is in the family Anatidae (BLI 2007a, p. 1).

Habitat and Life History

The Brazilian merganser is highly adapted to mountainous, highly oxygenated clear-water streams and rivers, generally with pools greater than 1 m (3 ft) in depth, and typically bordered by evergreen forests (Bruno *et al.* 2006, p. 26; Collar *et al.* 1992, pp. 80–86; Ducks Unlimited 2007, p. 1; Hughes *et al.* 2006, p. 23; Lamas and Lins 2009, p. 3; Partridge 1956, pp. 478–480; Sibley and Monroe 1990, p. 41; Silveira and Bartman 2001, pp. 294–295). The Brazilian merganser's original distribution area encompassed the Atlantic Forest and Cerrado biome (Bianchi *et al.* 2005, p. 73; Braz *et al.* 2003, p. 70; Lamas and Lins 2009, p. 3; Silveira and Bartman 2001, pp. 294–295; Silveira 2008, pp. 420–421).

Brazilian mergansers are strong swimmers and divers, and have been observed to dive to a depth of 0.5 m (1.6 ft) (Silveira *et al.* 2001, p. 291). They typically feed in river rapids, still waters, or pools adjacent to waterfalls, whereas they rest and preen on exposed rocks in more slack water areas or at the river edges (Braz *et al.* 2003, p. 70; Hughes *et al.* 2006, p. 21; Lamas and

Lins 2009, p. 4; Partridge 1956, pp. 481–482; Silveira and Bartman 2001, p. 291). Brazilian mergansers feed primarily on a variety of fish species such as the Lambari (*Astyanax* species), and occasionally on insects, snails, and other aquatic macro-invertebrates (Partridge 1956, p. 483, Silveira *et al.* 2001, p. 291; Hughes *et al.* 2006, p. 32; Lamas 2006, p. 151; Lamas and Lins 2009, p. 4).

Brazilian mergansers are not migratory and are believed to be monogamous. Breeding pairs appear to maintain their territories along a stretch of river (up to ca. 12 km (7.5 mi)) throughout the year (Partridge 1956, p. 477; Silveira and Bartman 2001, p. 295; Braz *et al.* 2003, p. 70; Hughes *et al.* 2006, pp. 23, 33; Lamas 2006, p. 149; Ducks Unlimited 2007, p. 1). The breeding season begins in June, and young hatch around August (Partridge 1956, p. 487; Lamas and Santos 2004; Bruno *et al.* 2006, p 27). Their brood size is between two and six (Silveira *et al.* 2001, p. 296; Bruno *et al.* 2006, p. 26). Females establish their nests in the cavities of trees that are adjacent to the river. The females incubate their eggs alone, although males are attentive and remain nearby feeding and perching at the river shoreline (Bruno *et al.* 2006, p. 29; Lamas and Santos 2004, p. 38; Partridge 1956, pp. 484–485). Females may also locate their nests in the cavities of cliffs or rocky outcrops or in river banks (Bruno *et al.* in press; Lamas and Santos 2004, pp. 38–39; Lamas and Lins 2009, p. 4).

Range and Distribution

For as long as the Brazilian merganser has been known, it has always been considered a rare species, possibly due to its shy nature (Lamas 2006, p. 151). It occurs in a few fragmented locations in south-central Brazil, including the upper tributaries of rivers within the Atlantic Forest biome and to the west in the Cerrado biome (Silveira and Bartmann 2001, pp. 287–288). The Brazilian merganser occurred historically in riverine habitats throughout southeastern Brazil, northeastern Argentina, and eastern Paraguay (Hughes *et al.* 2006, p. 24). Currently, the species is found in extremely low numbers at disjunct localities of Brazil, and possibly in northeastern Argentina and eastern Paraguay (BLI 2007a, pp. 1–5; Hughes *et al.* 2006, pp. 28–31; Lamas and Lins 2009, p. 3). The Brazilian merganser may be extirpated from Argentina and Paraguay, and from Mato Grosso do Sul, São Paulo, Rio de Janeiro, and Santa Catarina, in Brazil (BLI 2009b, pp. 1–2). The vast majority of the species' extant population and remaining suitable habitats occur in Brazil, including its largest population, which is estimated to contain around 80 pairs (Lamas 2006, p. 151).

The species likely still occurs in the Brazilian States of Tocantins, Bahia, Goiás, Minas Gerais, and Paraná (Hughes *et al.* 2006, pp. 51–52). It was found in 2002 at the Serra de Canastra National Park (SCNP), Minas Gerais. In 2004 it was found at Itacolomi State Park, Minas Gerais (DePaula *et al.* 2008, p. 289). Although SCNP is a 200,000-hectare (ha) (494,211-acre (ac)) nationally protected park, only 71,500 ha (176,680 ac) are under strict protection (Lamas 2006, p. 150). In 2001–2002, the species was observed in nine localities in SCNP (Lamas 2006, p. 145). The SCNP is the only site where this species is being regularly monitored (Hughes *et al.* 2006, p. 52). Other recent sightings of the species in previously undocumented areas of Brazil indicate that the Brazilian merganser may be more abundant and widespread than previously believed (Bianchi *et al.* 2005, p. 72; Lamas 2006, p. 145). For example, the species was recently confirmed in a nonprotected area in the State of Minas Gerais, Brazil (Lamas *et al.* 2009).

Historically, the Brazilian merganser occurred in Argentina, Brazil, and Paraguay. In Argentina, the Brazilian merganser was documented in three protected areas: The Iguazú National Park, the Parque Provincial Urugua-í, and the Private Reserve Urugua-í (Chebez 1994; Antas 1996; Chebez *et al.,* 1998 in Hughes *et al.* 2006, p. 49). Some researchers believe that sizable overall populations may still exist in the extensive river systems of Misiones in Argentina, specifically in the Uruguaí Provincial Park (Hughes *et al.* 2006, pp. 31, 50–51). In 2002, it was reported to have been found on the Arroyo Uruzú in Misiones, Argentina, the first record in the country in 10 years, despite extensive surveys (BLI 2010b). However, it is unclear whether the species still exists in Argentina. In Paraguay, the last confirmed sighting of the species is from 1984 (Hughes *et al.* 2006, p. 31). We are unable to confirm that the species exists in areas outside of Brazil, and therefore are unable to evaluate any threats. Because we do not know if populations of this species still exist outside of Brazil, for the purpose of this rule, we are limiting our analysis of threats to the current Brazilian population of the species.

Population Estimate

BLI estimates the total population is between 50 and 249 individuals, and the population is presumed to be declining (BLI 2010b, p. 1). Recent records indicate the population size may be larger than 250, although researchers have not been able to estimate the total population size (Lamas and Lins 2009, p. 5).

Conservation Status

IUCN considers the Brazilian merganser to be "Critically Endangered," because "although recent records from Brazil, and particularly a recent northerly range extension, indicate that this species' status is better than previously thought, the remaining population is still extremely small and severely fragmented, and the perturbation and pollution of rivers continues to cause declines" (BLI 2009b, p. 1). The species is not listed in any of the Appendices of CITES (*http://www.cites.org*).

III. Cherry-Throated Tanager (Nemosia rourei)

Species Description

The cherry-throated tanager has black plumage on its head with a white crown, black coloring on its back, wings with gray scapular feathers, white feathers on its undersides, and red coloring on its throat and upper chest. Its tail is square tipped, its bill is black, and it has pink feet (Bauer *et al.* 2000, p. 102; BLI 2010d, p. 1; Venturini and Paz 2007, p. 609). It has a distinct vocalization with calls between 5 and 8 kilohertz (described in Bauer *et al.* 2000, pp. 103–104) and has been observed both singly and in small flocks. The species' diet includes caterpillars, butterflies, ants, and various other arthropods (Bauer *et al.* 2000, p. 104; Venturini *et al.* 2005, p. 65).

Taxonomy

The cherry-throated tanager is a member of the Thraupidae family. It was first described by Cabanis in 1870 (BLI 2010d, p. 1).

Habitat and Life History

The cherry-throated tanager is endemic to the Atlantic Forest in southeast Brazil. It inhabits the upper canopies of trees within humid, montane primary forests at elevations 850–1,250 m (2,789–4,101 ft) above sea level (Bauer *et al.* 2000, pp. 97–104; Venturini *et al.* 2005, pp. 60–66). The cherry-throated tanager is a primary forest-obligate species that typically forages within the interior crowns of tall, epiphyte-laden trees and occasionally within lower canopy levels (ca. 2 m (7 ft)) at the forest edge. Cherry-throated tanagers can be found in mixed-species flocks. Observations indicate that they require relatively

large territories (ca. 4 km² (1.5 mi²)) (Venturini *et al.* 2005, p. 66). Within its current distribution, the species makes sporadic use of coffee (*Coffea* spp.), pine (*Pinus* spp.), and eucalyptus (*Eucalyptus* spp.) plantations, presumably as travel corridors between remaining patches of primary forest (Venturini *et al.* 2005, p. 66).

Little is known about the breeding behavior of the cherry-throated tanager. However, a single field observation indicates that perhaps both sexes help build nests (Venturini *et al.* 2002, pp. 43–44). A nest (observed in November) was constructed of moss, and possibly thin twigs, and the material was placed in natural depressions of branches near the trunk within the mid-canopy (Venturini *et al.* 2002, pp. 43–44).

Range and Distribution

The cherry-throated tanager is found in primary forest habitats in Espírito Santo and possibly Minas Gerais and Rio de Janeiro, Brazil (BLI 2010d, p. 1). In 1941, it was found in the mountains of Espírito Santo State at three sites: Itarana, Jatiboca (elevation 900 m (2,953 ft)), and the Augusto Ruschi Biological Reserve (Venturini *et al.* 2005, p. 63). Since 1998, the cherry-throated tanager has been documented at various sites of remnant primary forest in south-central Espírito Santo. In February 1998, it was located in a private reserve, Fazenda Pindobas IV, in the municipality of Conceição. It was also documented in Caetés, in the Vargem Alta municipality in southern Espírito Santo (30 km (18.6 mi) southeast of Pindobas) (Venturini *et al.* 2005, p. 61). Bauer *et al.* (2000, p. 99) reported a sighting in Pirapetinga (Minas Gerais) at an altitude of 150 m (492 ft). In October 2002 and in January 2003, researchers heard *Nemosia* vocalizations in the Augusto Ruschi Biological Reserve (Biológica Augusto Ruschi), which may have been this species (Venturini *et al.* 2005, pp. 63–64). However, the cherry-throated tanager may only currently exist in Espírito Santo, where a corridor was just established specifically for this species via Decree no. 2529–R (BLI 2010h). Espírito Santo contains Atlantic Forest remnants, which may contain the only viable remaining habitat for this species.

Population Estimates

The cherry-throated tanager was presumed to be extinct until 1998. Prior to that, the species was only known from a single specimen collected in the 1800s and from a reliable sighting of eight individuals in 1941 (Collar *et al.* 1992, p. 896; Ridgely and Tudor 1989, p. 34; Scott and Brooke 1985, p. 126). The species was rediscovered in 1998 (Bauer *et al.* 2000, p. 97; Venturini *et al.* 2005, p. 60). BLI estimates the population to range from 50 to 249 individuals, and it is believed to be declining (BLI 2010d, p. 1). Venturini *et al.* (2005, p. 66) believe the IUCN population estimate of 250 birds may be too high, considering that the maximum number of individuals recently recorded was 14, including 6 birds in Pindobas and 8 birds in Caetés.

Conservation Status

IUCN considers the cherry-throated tanager to be "Critically Endangered" because its extant population is extremely small (estimated to be between 50 and 249 individuals), highly fragmented, and presumed to be declining (BLI 2010d, p. 1). On the Brazilian Red list the species is "threatened" (MMA 2003, Machado *et al.* 2008). Within Brazil, similar to U.S. State wildlife categories of conservation status, this species is categorized differently based on each "state" within which it is found. In Espírito Santo, it is considered "critically endangered" (ES–DOE 2005). In the Minas Gerais Region, it is considered "Probably extinct" (Machado *et al.* 2008). The species is not listed in any of the Appendices of CITES (*http://www.cites.org*).

IV. Fringe-Backed Fire-Eye (Pyriglena atra)

Species Description

The fringe-backed fire-eye has distinctive red eyes and measures approximately 17.5 cm (7 in) in length. Males are black with a small patch of black feathers on their backs lined with white edges. Females are more of a reddish-brown color, with a black tail, brown underparts, and a whitish throat (BLI 2010e, p. 1).

Taxonomy

The fringe-backed fire-eye belongs in the "antbird" family Thamnophilidae, and was first described by Swainson in 1825 (BLI 2010e, p. 1). Sick (1991, p. 416) describes this species to be similar to the white-backed fire-eye (*Pyriglena leuconota*). The fringe-backed fire-eye was previously referred to as Swainson's fire-eye, and is also called "Alapi noir" in French, "Fleckenmantel-Feuerauge" in German, and "Ojodefuego de Bahía" in Spanish (del Hoyo 2003, p. 637).

Habitat and Life History

The fringe-backed fire-eye is endemic to the Atlantic Forest biome and typically inhabits dense understory at the edges of lowland primary tropical forests (BLI 2007e, p. 2; Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637). The species has also been found to occupy degraded forests and dense understory of secondary-growth forest stands. It can also occupy early-successional forest stands, but avoids any areas with open understories (e.g., sunny openings, interior forest) (del Hoyo *et al.* 2003, p. 637).

The fringe-backed fire-eye forages in dense, tangled vegetation with numerous horizontal perches within approximately 3 m (10 ft) of the ground, although it occasionally feeds higher up in the canopy (ca. 10 m (33 ft)) (Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637). The species typically occurs as individual birds, in closely associated pairs, or in small family groups. The bird often relies on army ant (*Eciton* spp.) swarms to flush their prey, which may include cockroaches (superfamily Blattoidea), grasshoppers (family Acrididae), winged ants (class Chilopoda), caterpillars (order Lepidopera), and geckos (family Gekkonidae) (Sick 1993, pp. 403–404; del Hoyo *et al.* 2003, pp. 637–638).

Limited specific information is known about the species' breeding behavior (del Hoyo *et al.* 2003, p. 638). However, females of this genus typically lay two eggs in spherical nests that are approximately 10 cm (4 in) in diameter, have a side entrance, and are attached to vegetation within roughly 1 m (3.3 ft) of the ground (Sick 1993, pp. 405–406). Both sexes in this genus typically help to build nests, brood clutches, and attend their young (Sick 1993, pp. 405–406).

Range and Distribution

The fringe-backed fire-eye occurs along a narrow belt of coastal forest habitat from southern Sergipe to northeastern Bahia, Brazil (del Hoyo *et al.* 2003, p. 637; BLI 2010e, p. 1). The fringe-backed fire-eye's distribution is less disjunct than previously believed (BLI 2010e). The species' entire population was previously believed to be restricted to a few sites of remnant primary forest, totaling roughly 9 km² (3.5 mi²) in northeastern Bahia. In 2002, approximately 18 individuals were observed in a forested site in Sergipe (del Hoyo *et al.* 2003, p. 638). This discovery extended the species' known range to the north by approximately 175 km (109 mi) (del Hoyo *et al.* 2003, p. 638). Its current estimated range is 5,000 km² (1,930 mi²), although it exists in fragmented or degraded habitat within its range (BLI 2010e).

Population Estimates

The fringe-backed fire-eye's population is estimated to be between

1,000 and 2,499 individuals (BLI 2010e, p. 1). The available information indicates that the species' population is fragmented among 6 to 10 occupied areas (BLI 2010e, p. 3). Its population, along with the extent and quality of its habitat, continues to decline (BLI 2010e, p. 1).

Conservation Status

IUCN considers the fringe-backed fire-eye to be "Endangered" because it has "a small fragmented range, within which the extent and quality of its habitat are continuing to decline and where it is only known from a few localities" (BLI 2010e, p. 1). In addition, the species is protected under Brazilian law (Collar *et al.* 1992, p. 678). The species is not listed in any of the Appendices of CITES (*http://www.cites.org*).

V. Kaempfer's Tody-Tyrant (Hemitriccus kaempferi)

Species Description

The Kaempfer's tody-tyrant is an olive-green bird measuring 10 cm (4 in) in length (BLI 2010c, p. 1). The head and face have olive-brown coloring, while the upper parts and breast are a dull olive-green, the underparts are a pale greenish-yellow, and the throat is a pale yellow color. The primary wing feathers are dark and the secondary wing feathers have greenish-yellow borders. Each eye has a pale ring (BLI 2010c, p. 1).

Taxonomy

The Kaempfer's tody-tyrant is a member of the flycatcher family (Tyrannidae) (BLI 2010c, p. 1). The species was previously recognized under the genus *Idioptilon,* and was first described by Zimmer in 1953 (BLI 2010c, p. 1).

Habitat and Life History

The Kaempfer's tody-tyrant is endemic to the Atlantic Forest biome and inhabits well shaded edges of medium-height (ca. 12 to 15 m (39 to 49 ft)) primary- and secondary-growth alluvial forests that are typically in close proximity to rivers. The species appears to avoid tall, mature primary forest habitats (Collar *et al.* 1992, p. 776; Barnett *et al.* 2000, pp. 372–373; BLI 2010c, pp. 1–2). The Kaempfer's tody-tyrant feeds predominantly in the mid-story within roughly 1 to 3 m (3.3 to 10 ft) off the ground, but may also feed higher up (ca. 6 m (20 ft)) in the tree canopy.

There is little information available describing the diet of the Kaempfer's tody-tyrant; however, similar species within the Tyrannidae family feed on a variety of insects, which they often catch while in flight (Sick 1993, pp. 452–453). Breeding pairs typically forage together and appear to maintain small, well-defined, permanent territories (Barnett *et al.* 2000, p. 373; BLI 2010c, p. 2).

Both sexes help to build their nests, which can be located up to approximately 6 m (20 ft) above the ground and 2–3 m (6.6–10 ft) within the primary forest margin. Nests resemble elongated cups that can be up to 45 cm (18 in) long and are made of live mosses, grass, and dead leaves wrapped around a horizontal branch near the main trunk (Barnett *et al.* 2000, p. 373).

Range and Distribution

The Kaempfer's tody-tyrant inhabits humid, lowland forests of the coasts of Paraná and northeastern Santa Catarina, Brazil (Collar *et al.* 1992, p. 776; Collar *et al.* 1994, p. 139; Barnett *et al.* 2000, p. 371; Belmontes-Lopez *et al.* 2008, p. 2; BLI 2010c, p. 1). The Kaempfer's tody-tyrant has been located in the following 11 localities in southeast Brazil: Salto Piraí; Brusque; the RPPN Volta Velha near Itapoá; São Francisco do Sul municipality; Barra Velha municipality; Blumenau municipality; Piçarras/Itajuba (Piçarras municipality); Morro do Bau (Ilhota municipality); Sanepar bridge (São João River); National Park Saint-Hilare/Langue; Santa Catarina; and Guaraguaçu Ecological Station in southeast Paraná (BLI 2010c, p. 1). Recent survey records have extended the known range to 7,800 km^2 (3,012 m^2), although within this range the species' existence is sporadic due to fragmented habitat. According to BLI, the species is rare, but has been recorded in recent years in all of the locations above except Brusque. The last record for Brusque is from 1950, and the area has not been resurveyed since that time.

Population Estimates

There is very little information currently available that specifically addresses the Kaempfer's tody-tyrant's abundance; however, its extant population is estimated to be between 9,000 and 18,500 individuals and is believed to be declining (BLI 2010c, pp. 1–2).

Conservation Status

The IUCN considers the Kaempfer's tody-tyrant to be "Endangered" because it is estimated to have an extremely small and fragmented range (BLI 2010c, p. 1). It is protected by Brazilian legislation and by the State of Paraná (Belmontes-Lopez et al 2008, p. 2; BLI 2010c). The species is not listed in any of the Appendices of CITES (*http://www.cites.org*).

VI. Margaretta's Hermit (Phaethornis malaris margarettae)

Species Description

The Margaretta's hermit is a long-billed hummingbird. The average bill length is 37 millimeters (mm) (1.5 in) and the average tail length is 42 mm (1.7 in) (Hinkelmann 1996, pp. 122–123). Hinkelmann (1996, p. 147) describes the species to be morphologically similar to *Phaethornis malaris bolivianus,* with a paler underside.

Taxonomy

The Margaretta's hermit is in the hummingbird family, Trochilidae, but its taxonomic classification has been unclear for many years and is still disputed. This species is in the subfamily, Phaethornithinae, which are the "hermit" hummingbirds that occur in southern Mexico, Central America, and in South America as far south as northern Argentina. The Margaretta's hermit was first described as a new species in 1972 by A. Ruschi (Sibley and Monroe 1990). This bird has variously been considered a full species (*Phaethornis margarettae*) and placed as a subspecies with the long-billed hermit (*Phaethornis superciliosus*) and the great-billed hermit (*Phaethornis malaris*). A multitude of information indicates that Margaretta's hermit is most appropriately considered to be a subspecies of the great-billed hermit (P. malaris) (Howard and Moore 1980, p. 205; King 1981, p. 2; Sibley and Monroe 1990, p. 143; Sick 1993, p. 341; Hinkelmann 1996, pp. 125–135; del Hoyo *et al.* 1999, p. 543). Neither the IUCN nor BirdLife International currently recognizes the subspecies Margaretta's hermit (*Phaethornis malaris margarettae*); only the species level is recognized (BLI 2010j; IUCN 2010). IUCN's conservation status for both *P. malaris and P. superciliosus* is "least concern." Birdlife International recognizes *Phaethornis malaris margarettae* as *Phaethornis superciliosus* (BLI 2010j). Avibase, a database of all birds of the world maintained by Bird Studies Canada, indicates that it is a full species, *Phaethornis margarettae* (Avibase 2010). However, *Phaethornis malaris margarettae* is recognized by the Integrated Taxonomic Information System (ITIS) (ITIS 2010, *http://www.itis.gov*) as a subspecies. The 2009 Clement's Checklist, maintained by Cornell Lab of Ornithology, also accepts the taxonomy as *Phaethornis malaris margarettae.* Absent peer-reviewed

information to the contrary and based on the best available information, we consider Margaretta's hermit to be a subspecies of *Phaethornis malaris: Phaethornis malaris margarettae.*

Habitat and Life History

The Margaretta's hermit is endemic to the Atlantic Forest biome and is found in shrubby understories of primary- and secondary-growth tropical lowland rainforest (King 1981, p. 2; Hinkelmann 1996, pp. 133–140; Sibley and Monroe 1990, p. 143; del Hoyo *et al.* 1999, p. 543). Hummingbirds feed on the nectar of a variety of plant species, especially bromeliads, and often have a symbiotic relationship with specific plants for which they function as pollinators (Sick 1993, pp. 324–326; del Hoyo *et al.* 1999, p. 543; Buzato *et al.* 2000, p. 824). They also feed on a variety of small arthropods, which are an especially important source of protein for raising their young.

Females typically lay two eggs and are solely responsible for tending their young. Hummingbird nests are usually constructed on vegetation of items such as detritus, webs, leaves, and animal hair cemented together with regurgitated nectar and saliva (Sick 1993, pp. 330–331). Little is known of the subspecies' seasonal movements, but its daily movements within a local area are likely associated with the timing of flowering plants that are used for feeding (Sick 1993, pp. 324–336; del Hoyo *et al.* 1999, p. 543).

Range and Distribution

The Margaretta's hermit historically occurred in coastal forested habitats from Penambuco to Espírito Santo, Brazil (Sibley and Monroe 1990, p. 143; del Hoyo *et al.* 1999, p. 543; Hinkelmann 1996, pp. 132–135). The last confirmed occurrence of the Margaretta's hermit is from a relatively old (ca. 1978) sighting of the subspecies on a privately owned remnant forest called Klabin Farm, which is located in Espírito Santo and presently includes 40 km^2 (15.5 mi^2) of land (King 1981, p. 2). A portion of this area (ca. 15 km^2 (5.8 mi^2)) was designated as the Córrego Grande Biological Reserve in 1989 (Willis and Oniki 2002, p. 21; Costa 2007, p. 20). We consider this to be the species' current range. Margaretta's hermit likely also occurred at the Sooretama Biological Reserve in Espírito Santo until around 1977 (King 1981, p. 2).

Population Estimates

The current population of Margaretta's hermit is unknown, although it is likely to be small in light of the very limited area the subspecies may occupy (King 1981, p. 2).

Conservation Status

IUCN considered the Margaretta's hermit to be "Endangered" because its extant population was believed to have an extremely restricted distribution and the population is likely very small, if it survives at all (King 1981, p. 2). *Phaethornis superciliosus* and *Phaethornis malaris* are both currently classified as "Least Concern" by the IUCN, although the taxonomy of Margaretta's hermit is still uncertain. Both *Phaethornis superciliosus and Phaethornis malaris* are included in Appendix II of CITES (*http://www.cites.org*).

VII. Southeastern Rufous-vented Ground-cuckoo (Neomorphus geoffroyi dulcis)

Species Description

The southeastern rufous-vented ground-cuckoo is a large-sized terrestrial bird. The cuckoo has a distinctive flat frontal crest, a long tail and long legs, and a yellow-green curved bill (Roth 1981, p. 388; Payne 2005, p. 206). The species is blackish brown or reddish black in color, and has brown scale-like coloring on the breast with a black breast band and a reddish belly. It has a bare face with gray to blue coloring (Payne 2005, p. 206).

Taxonomy

The southeastern rufous-vented ground-cuckoo is one of seven subspecies of the rufous-vented ground-cuckoo (*Neomorphus geoffroyi*) in the Cuculidae family that occur at several disjunct localities from Nicaragua to central South America (Howard and Moore 1980, p. 178; Sibley and Monroe 1990, p. 107; del Hoyo *et al.* 1997, pp. 606–607; Payne 2005, pp. 204–207). Neither the IUCN nor BirdLife International currently addresses this subspecies; only the species level is addressed (BLI 2008; IUCN 2009). However, the subspecies is recognized by ITIS (ITIS 2009). Absent peer-reviewed information to the contrary and based on the best available information, we consider it to be a valid subspecies.

Habitat and Life History

The southeastern rufous-vented ground-cuckoo is an extremely shy, ground-foraging bird that requires large blocks of mature, undisturbed, tropical lowland forest within the Atlantic Forest biome (King 1981, p. 1; Sick 1993, p. 286; del Hoyo *et al.* 1997, pp. 606–607; Payne 2005, pp. 204–207). This species is unable to sustain flight for long distances, and researchers believe that major rivers and other extensive areas of nonhabitat impede their movements.

Southeastern rufous-vented ground-cuckoos feed on large insects, scorpions, centipedes, spiders, small frogs, lizards, and occasionally seeds and fruit. The species is agile when on the ground and highly adept at running and jumping through branches in pursuit of prey (Sick 1993, p. 278). The species is often associated with army ant (*Eciton* spp.) and red ant (*Solenopsis* spp.) colonies, whose foraying columns they use as "beaters" to flush their prey (Sick 1993, p. 286). They are also known to forage for flushed prey behind other species, such as the white-lipped peccary (*Tayassu pecari*) (Sick 1993, p. 286).

Unlike some other species of cuckoos, southeastern rufous-vented ground-cuckoos are not believed to be parasitic nesters. They build their own nests approximately 2.5 m (8 ft) above ground level in the branches of swampy vegetation (Roth 1981, p. 388; Sick 1993, p. 286). The species' nest resembles a shallow bowl, roughly 25 cm (10 in) across, made of sticks and lined with leaves. Once the young are fledged, the adults care for them away from the nest site (del Hoyo *et al.* 1997, pp. 606–607).

Range and Distribution

Although the southeastern rufous-vented ground-cuckoo had a widespread distribution historically, it has likely always been locally rare (King 1981, p. 1). Historic distributions included the Brazilian states of Bahia, Minas Gerais, Espírito Santo, and possibly Rio de Janeiro (King 1981, p. 1; Payne 2005, p. 207). The last confirmed sighting of this subspecies was in the Sooretama Biological Reserve north of the Doce River in Espírito Santo in 1977, and the subspecies was thought to be extinct (Roth 1981, p. 388; Scott and Brooke 1985, pp. 125–126; Payne 2005, p. 207). However, a recent photographic record (ca. 2004) indicates that the subspecies may still occur at Doce River State Park in Minas Gerais (Scoss *et al.* 2006, p. 1).

Population Estimates

The current population of rufous-vented ground cuckoos is unknown, although likely very low if the subspecies still exists (King 1981, p. 1).

Conservation Status

In 1981, when the original petition to list this subspecies was submitted, IUCN considered the southeastern rufous-vented ground-cuckoo to be "Endangered" because although the subspecies was "never numerous, this

extremely shy species is among the first to disappear if its primary forest habitat is disturbed and in southeastern Brazil where it occurs, most of such forest has been destroyed" (King 1981, p. 1). As of 2009, IUCN characterizes the rufous-vented ground-cuckoo as "Least Concern." Neither the species nor the subspecies are listed in any of the Appendices of CITES (*http://www.cites.org*).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. In considering what factors might constitute threats, we look beyond the exposure of the species to determine whether the species responds to the factor in a way that causes actual impacts to the species and we look at the magnitude of the effect. If there is exposure to a factor, but no response, or only a beneficial response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the factor is. If the factor is significant and therefore a threat, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. In making this final listing determination, we evaluated threats to each of these seven Brazilian bird species. Our evaluation of this information is discussed below.

These seven species all occur in the same biome: The Atlantic Forest, and with respect to the Brazilian merganser, also in the Cerrado Biome. These species depend on similar physical and biological features and on the successful functioning of their ecosystems to survive. They also face the same or very similar threats. Although the listing determination for each species is analyzed separately, we have organized the specific analysis for each species within the context of the broader scale and threat factor in which it occurs to avoid redundancy. Since these species face a suite of common threat factors, similar management actions will reduce or eliminate those threats. Effective management of these threat factors often requires implementation of conservation actions at a broader scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native environment. Thus, by taking this broader approach, we hope to organize this final rule effectively.

We are listing each of the seven species (species may also include subspecies, as defined in Section 3(15) of the Act) addressed in this rule as endangered. Many of the threats are the same or similar for all seven species. For each species, we identified and evaluated those factors that threaten the species and that may be common to all of the species. For example, the degradation of habitat and habitat loss due to deforestation is a threat to each species. We also identified and evaluated threats that may be unique to certain species, and that may not apply to all of the species addressed in this final rule. For example, the Brazilian merganser may be the only species addressed in this rule that is found in the Cerrado biome, and we have addressed threats that are unique to that species specifically, although most of the threats in the Atlantic Forest are the same in the Cerrado biome.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The best available information indicates that the threats to all of the seven Brazilian species addressed under this factor occur throughout the entire range of each species. These threats include the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome and, with respect to the Brazilian Merganser, in the Cerrado Biome. Habitat loss and fragmentation are the most significant threats to these species (Marini and Garcia 2005, p. 667). The major human activities that have resulted in the destruction, modification, or curtailment of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.,* soy beans, sugarcane, and corn), plantations (*e.g.,* eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.,* charcoal production, steel plants, and hydropower reservoirs). The Cerrado biome faces similar threats (Ratter *et al.* 1997, p. 223; Marini 2009, p. 1558). Forestry practices such as commercial logging, subsistence activities such as fuel wood collection, and changes in fire frequencies also contribute to the degradation of the native habitat (Scott and Brooke 1985, p. 118; Júnior *et al.* 1995, p. 147; Nunes and Kraas 2000, p. 44; Saatchi *et al.* 2001, pp. 868–869; BLI 2003a, p. 4; TNC 2007, p. 2; Peixoto and Silva 2007, p. 5; World Wildlife Fund 2007, pp. 3–51). In addition to the overall loss and degradation of native habitat within these biomes, the remaining tracts of habitat are severely fragmented.

Based on a number of recent estimates, 92 to 95 percent of the area (over 1,250,000 km^2 (482,628 mi^2)) historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (IUCN 1999, p. 22; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; Saatchi *et al.* 2001, p. 868; Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; TNC 2007, p. 1; World Wildlife Fund 2007, pp. 2–41). The Atlantic Forest has the two largest cities in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (Critical Ecosystem Partnership Fund (CEPF) 2002; The Brazilian Institute of Geography and Statistics (IBGE) 2007, Central Intelligence Agency Factbook, 2010).

Conversion to agriculture or plantations creates disturbed areas that are conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds. Over time, this results in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to negative impacts typically associated with nonnative plants, detailed below). Conversion to agriculture or plantations also increases watershed erosion, runoff, and sedimentation which further degrade habitat. These threats are significant, ongoing, and are expected to continue and increase in magnitude and intensity into the foreseeable future without adequate control.

Fire is a relatively new human-related threat to native species and natural vegetation in Brazil. (Nepstad *et al.* 2001, p. 395). Farmers practice slash-and-burn agriculture that creates open lowland areas suitable for the later colonization of nonnative plant species (Nunes and Kraas 2000, pp. 44–47).

Fires of all intensities, seasons, and sources are destructive to the Atlantic Forest and Cerrado Biome (Nepstad *et al.* 2001, p. 395–407). Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species. These fires alter microclimate conditions and cause conditions to be more favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas. The threat from intentional and accidental ignition of fires related to slash-and-burn clearing to the species in this final rule that depend on forested ecosystems is significant. Fire damages native vegetation and these species' habitat, including seedlings and juvenile and adult plants.

Species-Specific Evaluation Under Factor A

Black-Hooded Antwren

The black-hooded antwren appears not to be strictly tied to primary forest habitats. It may make use of secondary-growth forests or other disturbed areas such as modified restinga (described under Black-Hooded Antwren Habitat and Life history above), eucalyptus stands, abandoned banana plantations, and recently burned sites (Tobias and Williams 1996, p. 64; BLI 2010a, p. 1). However, its use of secondary-growth forests or other disturbed areas does not necessarily lessen the threat to the species from the effects of deforestation and habitat degradation. This species, although it may be tolerant of secondary-growth forests or other disturbed sites, has a small and declining population size (estimated to be 1,000—2,499 birds) and a severely restricted range of less than 130 km^2 (50 mi^2). Its habitat continues to be impacted. Habitat degradation can adversely impact this species just as equally as it impacts primary forest-obligate species (Harris and Pimm 2004, pp. 1612–1613). While the black-hooded antwren is relatively abundant locally, the entire range of the species encompasses only about 130 km^2 (50 mi^2), with only 45 percent of this area considered occupied (BLI 2010a, pp. 1–2).

The black-hooded antwren occurs in one of the most densely populated regions of Brazil, and most of the tropical forest habitats believed to have been used historically by the species have been converted or are severely degraded due to the wide range of human activities identified above (BLI 2003a, p. 4; BLI 2010d, p. 2; Collar *et al.* 1992, p. 667; Conservation International 2007a, p. 1; del Hoyo 2003, p. 616; Höfling 2007, p. 1; TNC 2007, p. 1; World Wildlife Fund 2007, pp. 3–51). In addition, the remaining tracts of suitable habitat in Rio de Janeiro and São Paulo are threatened by ongoing development of coastal areas, primarily for tourism enterprises (*e.g.,* large hotel complexes, beachside housing) and associated infrastructure support, as well as widespread clearing for expansion of livestock pastures and plantations, primarily for *Euterpe* palms (also known as Acai palms) (Collar *et al.* 1992, p. 667; BLI 2003a, p. 4; del Hoyo 2003, p. 616; World Wildlife Fund 2007, pp. 7 and 36–37; BLI 2010d, p. 2). These impacts have recently reduced suitable habitats at various key sites known to be occupied by the black-hooded antwren, such as Vale do Mambucaba and Ariró. The remaining occupied habitats at these sites are subject to ongoing human disturbances such as off-road vehicle use, burning, and recreational activities (Collar *et al.* 1994, p. 134; del Hoyo 2003, p. 616; BLI 2010a, p. 2).

Summary of Factor A—Black-Hooded Antwren

A significant portion of Atlantic Forest habitat has been, and continues to be, lost and degraded by various ongoing human activities, including logging, establishment and expansion of plantations and livestock pastures, urban and industrial developments (including many new hydroelectric dams), slash-and-burn clearing, intentional and accidental ignition of fires (CEPF 2001, pp. 9–15). Even with the recent passage of a national forest policy and despite many other legal protections in Brazil (*see* Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (Hodge *et al.* 1997, p. 1; CEPF 2001, p. 10; Rocha *et al.* 2005, p. 270). Native habitats at many of the remaining sites may be lost over the next several years (Rocha *et al.* 2005, p. 263). Furthermore, because the black-hooded antwren's extant population is already small, highly fragmented, and believed to be declining (BLI 2010a, pp. 1–3), any further loss or degradation of its remaining suitable habitat represents a significant threat to the species. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the black-hooded antwren.

Brazilian Merganser

The Brazilian merganser is extremely susceptible to habitat loss and degradation, habitat fragmentation, and hydrological changes from human activity (Collar *et al.* 1992, pp. 83–84; Silveira 1998, p. 58; Silveira and Bartman 2001, pp. 297–298; Hughes *et al.* 2006, pp. 36–41; Lamas 2006, pp. 151–153; Lamas and Lins 2009, p. 5). This species' habitat, particularly at the Serra de Canastra National Park (SCNP) in Minas Gerais, has been heavily impacted by changes to the hydrology around the park. These human activities include the establishment of hydroelectric power plants, building of dams and reservoirs, and deforestation (Lamas 2006, pp. 151–152). This species is adapted to highly oxygenated mountainous flowing riverine conditions, and therefore cannot occupy the lacustrine (lake-like) conditions of reservoirs that result from dam building activities within its occupied range (Hughes *et al.* 2006, pp. 23, 41). The loss of the species' terrestrial habitat has occurred due to the removal of forest cover and the degradation of water quality. Current estimates indicate that between 67 and 80 percent of the tropical savannah habitat historically comprising the Cerrado biome has been converted or severely degraded (Mantovani and Pereira 1998, p. 1455; Myers *et al.* 2000, p. 854; Butler 2007, p. 1; Conservation International 2007b, p. 1; World Wildlife Fund 2007, p. 50). Specific threats in SCNP include deforestation and subsequent erosion of river banks and siltation; erosion due to cattle grazing, mining, and associated dynamiting and waste disposal; domestic sewage; and pesticides (Lamas 2006, p. 152). In addition to the overall loss and degradation of native habitat within this species' habitat, the remaining tracts of habitat are severely fragmented.

Several secondary impacts that degrade suitable habitats have also resulted from the above activities and represent significant risks to the Brazilian merganser. These secondary impacts include increased runoff and severe siltation (from agricultural fields, livestock pastures, deforestation, diamond mining, and human impacts from population centers); changes in hydrologic conditions and local water tables (as a result of dam operations (*e.g.,* flood control, power generation) and excessive pumping for irrigation or domestic and industrial water use); and increases in water pollutants (due to agricultural, industrial, and domestic waste products) (del Hoyo *et al.* 1992, p. 625; Benstead 1994, p. 8; Collar *et al.*

1994, p. 51; Pineschi 1999, p. 1; Silveira and Bartman 2001, pp. 297–298; Braz *et al.* 2003, p. 70; Lamas and Santos 2004, p. 40; Bianchi *et al.* 2005, p. 73; Hughes *et al.* 2006, pp. 40–48; Lamas 2006, pp. 151–153; BLI 2007a, pp. 1–6; Ducks Unlimited 2007, p. 1; Silveira 2008, p. 421; Lamas and Lins 2009, p. 5). These secondary impacts negatively affect the Brazilian merganser by reducing water clarity, altering water depths and flow patterns, removing or limiting populations of preferred prey species, and introducing toxic compounds. These secondary impacts may also increase the risk of introducing disease vectors and expanding populations of potential predator and competitor species into areas occupied by the Brazilian merganser.

The loss of habitat throughout the historic range of the Brazilian merganser due to the above human activities has drastically reduced the species' abundance and extent of its occupied range. These activities are currently a significant risk to the species' continued existence because populations are being limited to highly fragmented patches of habitat (Collar and Andrew 1988, p. 21; Collar *et al.* 1992, pp. 83–84; Collar *et al.* 1994, p. 51; Benstead 1994, p. 8; Benstead *et al.* 1994, p. 36; Silveira 1998, pp. 57–58; Hughes *et al.* 2006, pp. 37–48; BLI 2007a, pp. 1–6). Although this species seems to tolerate some environmental degradation if there are well preserved stretches in its territory in which the birds can seek shelter (Lamas 2006, p. 151), we expect the degree of these threats will continue and likely increase in the future.

Summary of Factor A—Brazilian Merganser

The above-mentioned human activities and their secondary impacts have significantly reduced the amount of suitable habitat for the Brazilian merganser, and the remaining areas of occupied habitat are highly fragmented. In addition, these activities are ongoing and continue to adversely impact all of the remaining suitable habitat within the Atlantic Forest and Cerrado biomes that may still harbor the Brazilian merganser. Even with the recent passage of national forest policy and despite many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout southeastern Brazil has increased since the mid-1990s (Hodge *et al.* 1997, p. 1; CEPF 2001, p. 10; Rocha *et al.* 2005, p. 270). Furthermore, because the Brazilian merganser's extant population is already extremely small, highly fragmented, and believed to be declining (BLI 2010b, pp. 1–4), any further loss or degradation of its remaining suitable habitat will severely impact the species (see Factor E). Therefore, based on the best scientific data currently available, we find that the present or threatened destruction, modification, or curtailment of the species' habitat or range threatens the continued existence of the Brazilian merganser.

Cherry-Throated Tanager

Most of the tropical forest habitats believed to have been used historically by the cherry-throated tanager have been converted or are severely degraded due to human activities (Ridgely and Tudor 1989, p. 34; Bauer *et al.* 2000, pp. 98–105; Venturini *et al.* 2005, p. 68; BLI 2010d, p. 2). Degraded and fragmented forests cause a decrease in gene flow, which may cause inbreeding and decreased fitness of forest species (Tabanez and Viana 2000, pp. 929–932). In the Atlantic Forest, there is a high percentage of rare tree species (these researchers defined rare species as being found only once in the forest fragment). Due to their method of reproduction, if these rare tree species are not able to cross-pollinate, rather if they are self-pollinating or self-incompatible (in-breeding), reduction in fitness may occur. This inbreeding could lead to an increase in local extinction of tree species on which species such as the cherry-throated tanager depends. The degradation of forests has led to an increase in density of liana (woody vines that may be native or non-native) in the Atlantic forests of Brazil in part due to the increase in light availability. Liana infestation of these forest fragments cause tree falls and encourage gap-opportunistic species to take over (Tabanez and Viana 2000, pp. 929–932), thus further altering the old forest structure of the cherry-throated tanager's preferred habitat.

Secondary impacts that are associated with forest fragmentation and degradation include the potential introduction of disease vectors and exotic predators within the species' historic range. As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the cherry-throated tanager remains at risk from past impacts to its primary forest habitats.

Summary of Factor A—Cherry-Throated Tanager

The activities described above and their secondary impacts continue to threaten the last known tracts of habitat within the Atlantic Forest biome that may still harbor the cherry-throated tanager. Because the species' extant population is extremely small, highly fragmented, and believed to be declining (BLI 2010d, p. 1), any further loss or degradation of its remaining suitable habitat will adversely impact the cherry-throated tanager. Therefore, we find that past and ongoing destruction and modification of the cherry-throated tanager's habitat are threats to the continued existence of the species.

Fringe-Backed Fire-Eye

The fringe-backed fire-eye occurs in one of the most densely human populated regions of Brazil. Most of the tropical forest habitats believed to have been used historically by the species have been converted or are severely degraded due to a wide range of human activities described above (Collar and Andrew 1988, p. 102; Collar *et al.* 1992, p. 678; Sick 1993, p. 407; Collar *et al.* 1994, p. 135; BLI 2003a, p. 4; del Hoyo *et al.* 2003, p. 638; Conservation International 2007a, p. 1; Höfling 2007, p. 1; TNC 2007, p. 1; World Wildlife Fund 2007, pp. 3–51; BLI 2010e, p. 2).

This species is not believed to be strictly tied to primary forest habitats and may be able to make use of early successional, secondary-growth forests with dense understory vegetation (Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637; BLI 2007e, p. 2). However, this does not necessarily lessen the risk to the species from the effects of deforestation and habitat degradation. Habitat degradation can adversely impact species that tolerate secondary-growth forests as equally as it impacts primary forest-obligate species (Harris and Pimm 2004, pp. 1612–1613). The entire range of the fringe-backed fire-eye encompasses approximately 4,990 km^2 (1,924 mi^2), with only 20 percent of this area considered occupied (BLI 2007e, pp. 1–4; BLI 2010e).

The susceptibility to extirpation of limited-range species that are tolerant of secondary-growth forests or other disturbed sites can occur for a variety of reasons. These reasons may include when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). In addition, while the fringe-backed fire-eye may be tolerant of secondary-growth forests or other disturbed sites, these areas may not represent optimal conditions for the species, which could include dense understories and abundant prey species. For example,

management of plantations often involves intensive control of the site's understory vegetation and long-term use of pesticides, which eventually result in severely diminished understory cover and loss of potential prey species (Scott and Brooke 1985, p. 118; Saatchi *et al.* 2001, pp. 868–869; Rolim and Chiarello 2004, pp. 2687–2691). Such management practices eventually result in the loss of native understory plant species and create relatively open understories, which the fringe-backed fire-eye avoids (Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637; BLI 2007e, p. 2).

Secondary impacts associated with the above human activities include the potential introduction of disease vectors or exotic predators within the species' historic range (see Factor C). As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Even when potentially occupied sites may be formally protected (see Factor D), the remaining fragments of forested habitat will likely undergo further degradation due to their altered dynamics and isolation (through infestation of gap-opportunistic species, which alter forest structure and decrease in gene flow between species) (Tabanez and Viana 2000, pp. 929–932). Therefore, even without further habitat loss or degradation, the fringe-backed fire-eye remains at risk from past impacts to its suitable habitats.

Summary of Factor A—Fringe-Backed Fire-Eye

Most of the tropical forest habitats believed to have been used historically by the fringe-backed fire-eye have been converted or are severely degraded due to the above human activities. In addition, the remaining tracts of suitable habitat potentially used by the species, including many secondary-growth forests, are subject to ongoing clearing for agriculture fields and plantations (*e.g.,* sugar cane and oil palm), livestock pastures, and industrial and residential developments (Collar and Andrew 1988, p. 102; Collar *et al.* 1992, p. 678).

Even with the recent passage of national forest policy and in the face of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (Hodge *et al.* 1997, p. 1; CEPF 2001, p. 10; Rocha *et al.* 2005, p. 270), and native habitat at many of the remaining sites where this species exists may be lost over the next several years (Rocha *et al.* 2005, pp. 263, 270). Furthermore, because the species' extant population is already small, highly fragmented, and believed to be declining (BLI 2010e, p. 1), any further loss or degradation of its remaining suitable habitat represents significant threat to the species (see Factor E). Therefore, we find that destruction and modification of habitat are threats to the continued existence of the fringe-backed fire-eye.

Kaempfer's Tody-Tyrant

The Kaempfer's tody-tyrant is not strictly tied to primary forest habitats and can inhabit secondary-growth areas (Collar *et al.* 1992, p. 776; Barnett *et al.* 2000, pp. 372–373, 377; BLI 2010c, pp. 1–2). However, this does not lessen the threat to the species from the effects of ongoing deforestation and habitat degradation. This species has a restricted range (i.e., less than 21,000 km^2 (8,100 mi^2)), and its habitat is likely to continue to shrink and become more degraded due to development along the coast and secondary impacts that accompany development. Thus, habitat degradation can adversely impact such species just as equally as it impacts primary forest-obligate species (Harris and Pimm 2004, pp. 1612–1613).

The susceptibility to extirpation of limited-range species that are tolerant of secondary growth occurs for a variety of reasons. These reasons include when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). In addition, while the Kaempfer's tody-tyrant may be tolerant of secondary-growth forests or other disturbed sites, some areas may not represent optimal conditions for the species. For example, management of plantations often involves intensive control of the site's understory vegetation and long-term use of pesticides, which eventually result in severely diminished understory cover and increased incidence of potential prey species (Scott and Brooke 1985, p. 118; Saatchi *et al.* 2001, pp. 868–869; Rolim and Chiarello 2004, pp. 2687–2691). Such management practices eventually result in the loss of native understory plant species and relatively open understories. Insectivorous birds that feed in the understory, including those in the genus *Hemitriccus,* are especially vulnerable to such habitat modifications (Goerck 1997, p. 117). While the Kaempfer's tody-tyrant may inhabit some degraded habitat, this species does not appear to occupy altered sites such as plantations (Barnett *et al.* 2000, p. 377).

Even when potentially occupied sites are formally protected (see Factor D), the remaining fragments of forested habitat may undergo further degradation. The degradation is due to the area's altered dynamics and species isolation. This is characterized by decreased gene flow, an increase in inbreeding, decrease in species fitness, increase in liana infestation, and dominance of gap-obligate species (Tabanez and Viana 2000, pp. 929–932). Secondary impacts that are associated with human activities that degrade and remove native habitats within the Atlantic Forest biome include the potential introduction of disease vectors and exotic predators within the species' historic range (see Factor C). As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the Kaempfer's tody-tyrant remains at risk from past impacts to its suitable forested habitats.

Summary of Factor A—Kaempfer's Tody-Tyrant

The Kaempfer's tody-tyrant occurs in one of the most densely populated regions of Brazil, and most of the tropical forest habitats believed to have been used historically by the species have been converted or are severely degraded due to the range of human activities identified above. In addition, the remaining tracts of suitable habitat potentially used by the species, including many secondary-growth forests, are subject to ongoing clearing for agricultural fields, plantations (*e.g.,* banana, palmetto, and rice), logging, livestock pastures, and industrial and residential developments (Collar *et al.* 1992, p. 776; Barnett *et al.* 2000, pp. 377–378; BLI 2010c, p. 4).

Even with the recent passage of national forest policy and despite many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (Hodge *et al.* 1997, p. 1; CEPF 2001, p. 10; Rocha *et al.* 2005, p. 270). Native habitat at many of the remaining sites may continue to be lost over the next several years (Rocha *et al.* 2005, p. 263). In addition, because the extant population of the Kaempfer's tody-tyrant is already small, highly fragmented, and believed to be declining (BLI 2010c, pp. 1–3), any further loss or degradation of its remaining suitable habitat will adversely impact the species. Therefore,

we find that destruction and modification of habitat are threats to the continued existence of the Kaempfer's tody-tyrant.

Margaretta's Hermit

Most of the tropical forest habitats believed to have been used historically by the Margaretta's hermit have been converted or are severely degraded due to habitat destruction for uses such as agriculture, development, or firewood, similar to the other species above. The Margaretta's hermit cannot occupy these extensively altered areas (ICBP 1981, p. 2; Scott and Brooke 1985, p. 118; Sick 1993, p. 338; del Hoyo *et al.* 1999, p. 543). While the Margaretta's hermit is not strictly tied to primary forest habitats and can make use of secondary-growth forests, this does not lessen the threat to the subspecies from the effects of deforestation and habitat degradation. Habitat degradation can adversely impact species that are tolerant of secondary-growth forests just as equally as it impacts primary forest obligate species (Harris and Pimm 2004, pp. 1612–1613).

The susceptibility to extirpation of rare, limited-range species that are tolerant of secondary-growth forests occurs for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). The last site known to be occupied by the Margaretta's hermit totaled only about 40 km^2 (15 mi^2) (ICBP 1981, p. 2). While the Margaretta's hermit may be tolerant of secondary-growth forests, they may not represent optimal conditions for the species. For example, many hummingbird species are susceptible to excessive sunlight and readily abandon their nests in altered forested sites that receive too much exposure from sunlight (Sick 1993, p. 331). This exposure can occur due to various human activities that result in partial clearing (*e.g.,* selective logging). In addition, management of plantations often involves intensive control of the site's understory vegetation, which eventually results in severely diminished understory cover as well as food sources (Rolim and Chiarello 2004, pp. 2679–2680; Saatchi *et al.* 2001, pp. 868–869). Even if the forest canopy structure remains largely intact, such management practices eventually result in loss of native understory plant species and severely altered understory structure and dynamics, which can be especially detrimental to species such as the Margaretta's hermit.

Additionally, even when forested lands are formally protected (see Factor D), the remaining fragments of habitat where the subspecies may still occur will likely continue to undergo degradation due to their altered dynamics and isolation (Tabanez and Viana 2000, pp. 929–932). The potential introduction of disease vectors or exotic predators within the subspecies' historic range (see Factor C) is a secondary impact that can be associated with human activities and that can further degrade the remaining tracts of forested habitat potentially used by the subspecies. As a result of secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the Margaretta's hermit remains at risk from past impacts to its suitable forested habitats.

Summary of Factor A—Margaretta's Hermit

The Margaretta's hermit's range occurs within one of the most densely populated regions of Brazil. Human activities and their secondary impacts continue to threaten the last known tracts of habitat within the Atlantic Forest biome that may still harbor the Margaretta's hermit. Even with the recent passage of national forest policy and despite many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s, and native habitats at many of the remaining sites where this species is likely to occur may be lost over the next several years (Rocha *et al.* 2005, p. 263). The Margaretta's hermit has already been reduced to such an extent that it is now only known from a relatively old (ca. 1978) sighting (ICBP 1981, p. 2; Willis and Oniki 2002, p. 21), and any further loss or degradation of its remaining suitable habitat could cause the extinction of this subspecies. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the Margaretta's hermit.

Southeastern Rufous-Vented Ground-Cuckoo

Most of the tropical forest habitats believed to have been used historically by the southeastern rufous-vented ground-cuckoo have been converted or severely degraded by the human activities discussed above (ICBP 1981, p. 1; Scott and Brooke 1985, p. 118; Sick 1993, p. 286; del Hoyo *et al.* 1997, pp. 606–607; Payne 2005, p. 207). Terrestrial insectivorous birds that are primary forest-obligate species, such as the southeastern rufous-vented ground-cuckoo, are especially vulnerable to habitat modifications (Goerck 1997, p. 116), and cannot occupy these extensively altered habitats. Del Hoyo *et al.* (1997, p. 207) suggest that the rufous-vented ground-cuckoo would be one of the first species to be extirpated from an area when its primary forest habitat is isolated. This is based on the extirpation of another *Neomorphus geoffroyi* subspecies at Barro Colorado in response to operations of the Panama Canal (del Hoyo *et al.* 1997, pp. 606–607; Payne 2005, p. 207).

Even when they are formally protected (see Factor D), the remaining fragments of primary forest habitat where the subspecies may still occur will likely undergo further degradation due to their altered dynamics and isolation (Tabanez and Viana 2000, pp. 929–932). In addition, secondary impacts associated with human activities include the potential introduction of disease vectors or exotic predators within the subspecies' historic range (see Factor C). As a result of the above influences, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the southeastern rufous-vented ground-cuckoo remains at risk from past impacts to its primary forest habitats.

Summary of Factor A—Southeastern Rufous-Vented Ground-Cuckoo

The above human activities and their secondary impacts continue to threaten the remaining tracts of habitat within the Atlantic Forest biome that may still harbor the southeastern rufous-vented ground-cuckoo (del Hoyo *et al.* 1997, pp. 606–607; BLI 2003a, p. 4; Conservation International 2007a, p. 1; Höfling 2007, p. 1; TNC 2007, p. 1; Payne 2005, p. 207; World Wildlife Fund 2007, pp. 3–51). Even with the recent passage of national forest policy, and despite many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout southeastern Brazil has increased since the mid-1990s (Hodge *et al.* 1997, p. 1; CEPF 2001, p. 10; Rocha *et al.* 2005, p. 270). The subspecies' population has already been reduced to such an extent that it is now only known from one possible recent (ca. 2004) sighting of a single bird (Scoss *et al.* 2006, p. 1). Any further loss or degradation of remaining suitable habitat could cause the

extinction of this subspecies. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the southeastern rufous-vented ground-cuckoo.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Black-hooded antwren, Cherry-throated tanager, Fringe-backed fire-eye, Kaempfer's tody-tyrant, and Southeastern rufous-vented ground-cuckoo

Other than bird watching, we are unaware of any commercial, recreational, scientific, or educational purpose for which the black-hooded antwren, Cherry-throated tanager, Fringe-backed fire-eye, Kaempfer's tody-tyrant, and Southeastern rufous-vented ground-cuckoo are currently being used. Ecotourism such as bird watching is a vital component of conservation efforts. These efforts focus people's awareness on the forest and its value. Ecotourism, although it may have detrimental effects in some cases, is generally considered important to species' long-term conservation (Riley & Wardill 2001; Whitten 2006). The best available information does not indicate that tourism, particularly bird watching, threatens any of these species. As a result, we do not consider overutilization to threaten the continued existence of the black-hooded antwren, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, and southeastern rufous-vented ground-cuckoo.

For the following two species, Brazilian merganser and Margaretta's hermit, additional discussion of threats follows.

Brazilian Merganser

Historically, there was likely little rangewide hunting pressure on the Brazilian merganser, presumably due to the species' secretive nature, naturally low densities in relatively inaccessible areas, and poor palatability (Partridge 1956, p. 478; Silveira and Bartman 2001, p. 297; Lamas 2006, pp. 152–153). Since the first formal description of the species in the early 1800s, the Brazilian merganser was collected for scientific study and museum exhibition (Hughes *et al.* 2006, p. 46; BLI 2007a, p. 2). Past hunting and specimen collection may have contributed to the species' decline in some areas (Hughes *et al.* 2006, p. 46). These activities may continue today, although presumably at very low levels (Benstead 1994, p. 8; Hughes *et al.* 2006, p. 48). In the proposed rule, species collection for scientific study, museum exhibition, and hunting were mentioned as possibly affecting populations of the Brazilian merganser. Although these may occur, the best available information does not indicate that they are occurring on a scale that threatens this species (BLI 2010b, p. 2). Therefore, we do not believe these activities are threats to the species.

Tourism is known to occur in SCNP; however, it currently does not appear to be a threat to the species (Lamas 2006, p. 152). SCNP's protected area is approximately 715 km^2 (276 mi^2) (Lamas 2006, p. 146). The park was specifically created to protect the headwaters of the São Francisco River (2,830 km (1,760 mi) in length), and to protect wildlife in Southeastern Brazil. Although the Brazilian merganser is a shy species, some birds may become habituated to tourism. A breeding pair was observed for several years that inhabited a frequently visited area of the park (Bartmann 1988; Silveira and Bartmann 2001 in Lamas 2006, p. 152). This is uncommon behavior for this species, but it demonstrates that some of these birds are able to tolerate some amount of tourism. Additionally, although tourism occurs in the park, tourists do not access the entire area that may be potentially inhabited by the Brazilian merganser. Not all of the suitable habitat for this species is easily accessible to tourists (Lamas 2006, pp. 146–147). Based on surveys done by Lamas, it appears that there is adequate habitat in the park for the species to conduct breeding and feeding activities despite the level of tourism that occurs. During the 2001–2002 period, 49 stream segments were surveyed, and this species was found in 9 locations; 81 birds were believed to inhabit the areas sampled (Lamas 2006, pp. 145, 149). There appears to be a healthy population of Brazilian mergansers in this park, and again, not all of the suitable habitat for this species is easily accessible to tourists. The amount of tourism occurring does not appear to negatively affect this species based on the unexpectedly high number of birds encountered during the 2001–2002 survey results. Therefore, we do not find that tourism is a threat to the species.

We are unaware of any other commercial, recreational, scientific, or educational purpose for which the Brazilian merganser is currently being used. As a result, we do not consider overutilization to threaten the continued existence of the Brazilian merganser.

Margaretta's Hermit

In the past, many species of hummingbirds that occur in southeastern Brazil such as the Margaretta's hermit were collected for use in the fashion industry due to their colorful plumage. Populations of some species have been extirpated or remain severely diminished as a result (Sick 1993, pp. 337–338). Due to concerns about hummingbirds in international trade, in 1987, the entire family, Trochilidae, was listed in Appendix II of CITES (www.cites.org). CITES is a treaty that implements a system of permits to regulate international trade in certain protected animal and plant species.

Appendix II of CITES includes species that, although not necessarily threatened presently with extinction, may become so unless the trade in specimens is strictly controlled. International trade in specimens of Appendix-II species is authorized through permits or certificates, once the granting authorities have ascertained certain factors, including that trade will not be detrimental to the survival of the species in the wild, and that the specimen was legally acquired (www.cites.org).

Since the listing of the family under CITES in 1987, there have been eight CITES-permitted international transactions in specimens of the species *Phaethornis malaris;* however, no trade has been reported at the subspecies level, *Phaethornis malaris margarettae* (John Caldwell, United Nations Environment Programme, World Conservation Monitoring Centre (UNEP–WCMC), pers. comm., May 13, 2008). According to WCMC, the 8 transactions involved a total of 30 specimens of *Phaethornis malaris,* which were imported into the United States from the United Kingdom, Peru, and Suriname. The two latter countries are within the species' range (John Caldwell, UNEP–WCMC, pers. comm., May 12, 2008). Due to the suspected small, declining population and restricted range of the Margaretta's hermit, we believe that the 30 specimens reported in trade were not this subspecies. Furthermore, we are unaware of any unreported CITES trade or illegal international trade in specimens of Margaretta's hermit. Therefore, we believe that international trade is not a factor influencing the subspecies' status in the wild.

Local hummingbird populations may also be impacted by collection for various uses, including scientific research, preparation of "novelty" exhibits, consumption in local dishes, and for the zoo or pet trade (Scott and Brooke 1985, p. 118; Sick 1993, pp. 337–338; Rolim and Chiarello 2004, pp. 2679–2680). However, the best available information does not indicate that these

activities occur with respect to the Margaretta's hermit.

The population of the Margaretta's hermit is likely extremely small and occurs within a severely restricted range. Due to its rarity, the removal or dispersal of any individuals of this subspecies or even a slight decline in the population's fitness due to any intentional or inadvertent hunting and specimen collection would adversely impact the subspecies' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the Margaretta's hermit, we are unaware of any other commercial, recreational, scientific, or educational purpose for which the Margaretta's hermit is currently being utilized.

Summary of Factor B

The best available information does not indicate that overutilization for commercial, recreational, scientific, or educational purposes are threats to the seven bird species addressed in this rule. Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to any of these seven species.

C. Disease or Predation

Black-Hooded Antwren, Brazilian Merganser, Cherry-Throated Tanager, Fringe-Backed Fire-eye, Kaempfer's Tody-Tyrant, Margaretta's Hermit, and Southeastern Rufous-Vented Ground-Cuckoo

Diseases of these seven species are poorly known and are not currently considered to be a threat to the Black-hooded antwren, Brazilian Merganser, Cherry-throated tanager, Fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and Southeastern rufous-vented ground-cuckoo, or a factor in their decline. Large, stable populations of wildlife species are generally able to adapt to natural levels of disease within their historic ranges. However, the extant populations of these seven species are considered to be small, fragmented, and declining (see species descriptions above). Extensive human activity in previously undisturbed or isolated areas has been known to lead to the introduction and spread of exotic diseases such as West Nile virus. Some of these diseases can negatively impact endemic bird populations (Neotropical News 2003, p. 1; Naugle *et al.* 2004, p. 704). However, there is no evidence that disease is negatively impacting any of these seven bird species.

Extensive human activity in previously undisturbed or isolated areas can also lead to altered predator populations and the introduction of various exotic predator species, such as feral cats (*Felis catus*) and rats (*Ratus* spp.), which can be especially harmful to populations of endemic bird species (Courchamp *et al.* 1999, p. 219; Small 2005, p. 257; American Bird Conservancy 2007, p. 1; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242). Large, stable populations of wildlife species generally adapt to natural levels of predation within their historic ranges. However, the best available scientific and commercial information does not indicate that the occurrence of predation is of sufficient magnitude that it threatens the Black-hooded antwren, Cherry-throated tanager, Fringe-backed fire-eye, Kaempfer's tody-tyrant, and Southeastern rufous-vented ground-cuckoo. Nor do we expect the degree of predation on each of these species to increase in the future.

For the following two species, Brazilian merganser and Margaretta's hermit, additional discussion of potential predation threats follows.

Brazilian Merganser

There are a number of suspected predators of the Brazilian merganser (Hughes *et al.* 2006, p. 44; Lamas and Santos 2004, p. 39; Partridge 1956, p. 486). Lins and colleagues observed a great black-hawk (*Buteogallus urubitinga*) swooping over a merganser in Serra da Canastra. The merganser evaded capture by diving under the water each time the hawk got close (Lamas and Lins 2009, p. 4). Partridge (1956, p. 480) also drew attention to the black-and-white hawk-eagle as amongst the most dangerous predators of Brazilian merganser in Argentina. The same author highlighted the "dourado" (*Salminus brasiliensis,* syn. *maxillosus*), one of the most voracious fish of the upper Paraná, as a potential enemy to young ducklings of any species. Partridge hypothesized that the species' distribution may be naturally limited to upper river tributaries above waterfalls due to predation of their young by large predatory fish, such as the dourado. In addition, extensive human activity in previously undisturbed or isolated areas can result in altered predator or competitor (*e.g.,* cormorant (*Phalacrocorax* spp.)) populations and the introduction of various exotic predator species, such as feral dogs (*Canis familiaris*) and fish such as the largemouth bass (*Micropterus salmoides*) (Hughes *et al.* 2006, pp. 44–45). However, the best available scientific and commercial information does not indicate that the occurrence of these predators causes significant threats to the Brazilian merganser.

Margaretta's Hermit

With regard to predation, a variety of reptiles (e.g., snakes, lizards) and predatory birds (*e.g.,* owls, hawks) are known to prey on hummingbirds (Sick 1993, pp. 336–337). Young hummingbirds can be parasitized by botflies (*Philornis* spp.) (Sick 1993, pp. 336–337). Furthermore, nestling hummingbirds can be killed by raiding army ants (*Eciton* spp.), while some hornets and bees are potential competitors for flower nectar and have been known to lethally sting adult hummingbirds. Although this species is affected by predators, the available information suggests that predation is naturally occurring at a normal level and is a normal aspect of population dynamics. As a result, we do not believe that predation is considered to currently pose a threat to this species. The best available scientific and commercial information does not indicate that the occurrence of these predators or parasites causes significant threats to the Margaretta's hermit.

Summary of Factor C

Disease and predation remain a concern for the management of each of these seven species (black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and the southeastern rufous-vented ground-cuckoo). However, the best available information does not indicate that the occurrence of disease or predation incurred by these species rises to the level of threats that place any of these species at risk of extinction. As a result, we do not find that disease or predation threatens the continued existence of any of these seven species.

D. The Inadequacy of Existing Regulatory Mechanisms

All of these seven species are formally recognized as "endangered" in Brazil (Order No. 1.522) and are directly protected by various laws promulgated by the Brazilian government (Collar *et al.* 1992, p. 667; ECOLEX 2007, pp. 1–2; BLI 2010d, p. 2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: Export and international trade (*e.g.,* Decree No. 76.623, Order No. 419–P), hunting (*e.g.,* Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.,*

Decree No. 3.179). These measures (1) prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.,* Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.,* Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.,* Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (e.g., Normative Instruction No. 65, Law No. 11.116).

There are also various regulatory mechanisms (Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) in Brazil that direct Federal and State agencies to promote the protection of lands and that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 5–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (*e.g.,* Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas were developed in 2000 and are categorized based on their overall management objectives. These include national parks, biological reserves, ecological reserves, ecological stations, environmental protection areas, and national forests (Ryland 2005, pp. 612–618). These areas allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19). For example, Biological Reserves are restricted to a greater extent than the National Parks. Official uses of reserves include scientific study, environmental monitoring, and scientific education (Costa 2007, p. 9).

Protected areas were recommended for the majority of 900 priority areas for biodiversity conservation for Brazil's major biomes. Establishment of biodiversity corridors, with parks and reserves as key elements and the creation of protected areas in the 23 Amazonian ecoregions identified by World Wildlife Fund, was also recommended. As of 2005, there were 478 protected areas totaling 37,019,697 ha (14,981,340 ac). In addition to the Federal and State protected areas, there are also 450 private natural heritage reserves (RPPNs). In June 2010, 4 new protected areas in the Atlantic Forest's Bahia region were established through decree encompassing 65,070 ha (160,791 ac) (Conservation International 2010). Although these protected areas exist, activities such as deforestation and sustainable-use practices still occur in the Cerrado and Atlantic Forest regions (Ryland 2005, p. 616).

Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil, which helped facilitate the large-scale habitat conversions that have occurred throughout the Atlantic Forest and Cerrado biomes (Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874; Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2). These development projects include logging, housing and tourism developments, and expansion of plantations (Collar *et al.* 1992, p. 776; Ratter *et al.* 1997, pp. 227–228; Barnett *et al.* 2000, pp. 377–378; Saatchi *et al.* 2001, p. 874; Butler 2007, p. 3). All of these projects impact potentially important sites for each of these seven species and would affect habitat within and adjacent to established protection areas (Collar *et al.* 1992, p. 776; Barnett *et al.* 2000, p. 377–378). The Brazilian government encouraged further development of dams for hydroelectric power, irrigation, or municipal water supplies; expansion of agricultural practices, primarily for soybean production; and tourism enterprises (Braz *et al.* 2003, p. 70; Hughes *et al.* 2006, pp. 51–56). These competing priorities make it difficult to enforce regulations that protect the habitat of these seven species.

Thus, for the above reasons as well as lack of funding, personnel, or local management commitment, some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9; IUCN 1999, pp. 23–24; Bruner *et al.* 2001, p. 125; ADEJA 2007, pp. 1–2; Costa 2007, p. 7). The Worldwide Fund for Nature found that 47 of 86 protected areas were below the minimum level of implementation of Federal requirements, with only seven considered to be fully implemented (Neotropical News 1999, p. 9). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Nunes and Kraas 2000, p. 45; Neotropical News 2003, p. 13; Venturini *et al.* 2005, p. 68; Butler 2007, p. 7; Costa 2007, p. 7). Despite these efforts, threats to areas containing habitat for each of these seven species continue (ADEJA 2007, pp. 1–2; BLI 2010d, p. 2). Therefore, even with the expansion or further designation of protected areas, it is unlikely that the identified impacts to each of these seven species (*e.g.,* habitat loss due to residential and agricultural encroachment, resource extraction, and grazing) will be adequately addressed through existing regulatory mechanisms at the sites where these species are found or in their habitat.

Species-Specific Evaluations under Factor D

Black-Hooded Antwren

The black-hooded antwren occurs in a narrow coastal band below Rio de Janeiro. It has been seen in the buffer zone around Serra da Bocaína National Park and possibly within Tamoios Environmental Protection Area and the Ecological Reserve of Jacarepiá (del Hoyo 2003, p. 616; World Twitch 2007, p. 12; BLI 2010d, p. 2). It has been recommended that some of the sites where the species has been found be expanded and other sites be designated to ensure the species' currently occupied range is within protected areas.

Brazil's laws requiring resource protection that should benefit the black-hooded antwren are not effective due to the pressure to develop that is occurring in coastal areas south of Rio de Janeiro. Despite the existence of regulatory mechanisms to protect the species and its habitat, habitat loss throughout the Atlantic Forest biome has increased for more than a decade, with adverse impacts continuing and likely increasing into the foreseeable future. The existing regulatory mechanisms have proven difficult to enforce (Scott and Brooke 1985, pp. 118, 130; Neotropical News 1997b, p. 11; BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; TNC 2007, p. 2; Peixoto and Silva 2007, p. 5). As a result, threats to the black-hooded antwren's remaining habitat are ongoing (see Factor A) due to the challenges that Brazil faces to balance its competing development and conservation priorities. Therefore, when viewed in combination with the habitat threats identified in Factor A, we find that the existing regulatory mechanisms are

inadequate to ameliorate the current threats to the black-hooded antwren.

Brazilian Merganser

The Brazilian merganser is legally protected by national legislation promulgated by the governments in all three countries (Brazil, Argentina, and Paraguay) where it historically occurred (Hughes *et al.* 2006, pp. 50–57). According to the best available information, the vast majority of the species' remaining suitable habitats occurs (Hughes *et al.* 2006, pp. 28–31; BLI 2009a, pp. 1–2) in Brazil, and it is unclear whether there are populations remaining in Argentina and Paraguay (BLI 2010b). The Brazilian merganser is formally recognized as "endangered" (Order No. 1.522) in Brazil, and there are regulatory mechanisms that require direct protection of the species (ECOLEX 2007, pp. 1–2).

Four of Brazil's protected areas represent the major sites where the Brazilian merganser still occurs (Hughes *et al.* 2006, pp. 53–54). It occurs in a few fragmented locations in south-central Brazil, including the upper tributaries of rivers within the Atlantic Forest biome and to the west in the Cerrado biome (Silveira and Bartmann 2001, pp. 287–288; DePaula *et al.* 2008, p. 289). Notable among these areas are the Serra da Canastra National Park in Minas Gerais, which currently encompasses a portion of the species' largest known subpopulation (Bruno *et al.* 2006, p. 25; Lamas 2006, p. 151); the Chapada dos Veadeiros National Park in Goiás (Bianchi *et al.* 2005, pp. 72–73); and Jalapao State Park in Tocantins State (DePaula 2008, p. 289). These areas are considered critical for protecting some of the species' key remaining subpopulations (Collar *et al.* 1992, pp. 84–85; del Hoyo *et al.* 1992, p. 625; Silveira 1998, pp. 57–58; Silveira and Bartman 2001, pp. 287–300; Braz *et al.* 2003, pp. 68–71; Lamas and Santos 2004, pp. 39–40; Bianchi *et al.* 2005, pp. 72–74; Bruno *et al.* 2006, p. 30; Lamas 2006, pp. 145–154; BLI 2010a, pp. 1–2). Some conservation initiatives are under way. For example, the Service recently provided funding for a project to develop and strengthen conservation partnerships with local agricultural producers in the Serra da Canastra region, which could benefit the Brazilian merganser (US FWS 2006, p. 3). Additionally, in March 2010, the Global Environmental Facility (GEF) approved a $13 million grant for the Sustainable Cerrado Initiative, which seeks to conserve the Cerrado Biome (World Bank 2010.)

Although the four areas protected under Brazilian law include important sites where the species occurs, resource extraction and livestock grazing continue in Brazilian merganser habitat and pose threats to this species. In addition, not all of the remaining Brazilian mergansers occur in protected areas. Some key areas where the species occur are not formally protected and are subject to ongoing threats, such as proposed hydropower projects, logging, and continuing development (Lamas 2006; BLI 2010b). For these reasons, we expect these threats will continue into the future.

Despite the existence of these regulatory mechanisms, habitat loss throughout the Atlantic Forest biome has increased for more than a decade, with adverse impacts continuing and expected to increase into the future (Scott and Brooke 1985, p. 118; Collar *et al.* 1992, p. 84; BLI 2003a, p. 4; BLI 2003b, pp. 1–2; Braz *et al.* 2003, p. 70; Lamas and Santos 2004, p. 40; Hughes *et al.* 2006, p. 61; TNC 2007, p. 2). Illegal or unauthorized activities continue to impact the Brazilian merganser, including logging of gallery forests within riverine buffer areas. These activities include encroachment of logging; livestock grazing, subsistence activities within protected primary and secondary forests; and intentional burning (Hughes *et al.* 2006, p. 61; TNC 2007, p. 2; BLI 2009, p. 1).

Brazil's resource protection laws are inadequate to combat the intense development pressure that exists within the species' range. Despite the existence of these regulatory mechanisms, and the establishment in 2003 of a Brazilian Merganser Recovery Team, there are additional challenges. Protected areas do not address all the threats to the Brazilian merganser, nor do they encompass all occupied habitat of the species. There are government-sponsored programs that encourage development within the range of the species, and there is an absence of adequate enforcement. As a result, threats to the species' remaining habitat are ongoing (see Factor A). Therefore, when viewed in combination with the habitat threats and small population size identified under Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Brazilian merganser.

Cherry-Throated Tanager

Few sites have recently confirmed observations of the cherry-throated tanager. Possible sightings of the cherry-throated tanager have occurred in the Augusto Ruschi Biological Reserve (also known as Nova Lombardia Biological Reserve), which is approximately 5,000 hectares (ha) (12,355 acres (ac)) in Espirito Santo. Espirito Santo is likely the only State in Brazil where this species still exists. One of the key sites still occupied by the species is the Pindobas IV Farm. It was recommended that the farm be formally designated as a protected area to help ensure the species' future protection, and the owners of this farm have expressed interest in this recommendation (Bauer *et al.* 2000, p. 106; BLI 2010d, p. 2). Under Brazilian law, the remaining native forest on the owner's land could be designated as a private natural heritage reserve. In addition, in June 2010, the cherry-throated tanager received additional protections in the form of a decree (no. 2529–R) and wildlife corridors. Ten priority conservation areas were recognized by the State of Espirito Santo (BLI 2010h). These conservation measures represent progress for the conservation of this species.

Although Brazil still has various government-sponsored measures that continue to facilitate development projects, there is also a wide variety of regulatory mechanisms that require protection of the cherry-throated tanager and its habitat throughout the species' potentially occupied range. Conservation measures have improved within Brazil. However, due to competing priorities, threats to the species' remaining habitat are ongoing and are expected to continue. Therefore, when viewed with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the cherry-throated tanager.

Fringe-Backed Fire-Eye

As of 2007, the fringe-backed fire-eye did not occur within any protected areas, although it has been recommended that some of the key sites it occupies should be formally designated as protected areas to help ensure the species' future protection (Collar *et al.* 1992, p. 678; del Hoyo *et al.* 2003, p. 638; BLI 2007e, p. 2). Six Important Bird Areas have been identified in northern Bahia where this species may or is likely to occur (BLI 2010f). However, even with any future designation of protected areas, it is unlikely that all of the previously identified resource concerns for the fringe-backed fire-eye would be sufficiently addressed at these sites.

Although there is a wide variety of regulatory mechanisms in Brazil that require protection of the fringe-backed fire-eye and its habitat throughout the species' potentially occupied range, Brazil still has various government-

sponsored measures that continue to facilitate potentially harmful development projects. Due to competing priorities, significant threats to the species' remaining habitat are ongoing and are expected to continue. Therefore, when viewed in combination with habitat threats and small population size identified under Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the fringe-backed fire-eye.

Kaempfer's Tody-Tyrant

Currently, the Kaempfer's tody-tyrant is known to occur in 11 localities in southeast Brazil (Belmonte-Lopes *in litt.* in BLI 2010c). Although Brazil still has various government-sponsored measures that continue to facilitate development projects, there is also a wide variety of regulatory mechanisms in Brazil that require protection of the Kaempfer's tody-tyrant and its habitat throughout the species' potentially occupied range. The existing regulatory mechanisms that apply to this species have proven difficult to enforce (Scott and Brooke 1985, pp. 118, 130; BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; TNC 2007, p. 2; Peixoto and Silva 2007, p. 5). As a result, significant threats to the species' remaining habitats are ongoing (see Factor A) due to competing priorities. Therefore, when viewed in combination with habitat threats and small population size identified under Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Kaempfer's tody-tyrant.

Margaretta's Hermit

The Margaretta's hermit is included in Appendix II of CITES (*http://www.cites.org*). CITES is an international treaty among 175 nations, including Brazil and the United States, that entered into force in 1975 (UNEP–WCMC 2009a). In the United States, CITES is implemented through the Endangered Species Act (Act). The Act designates the Secretary of the Interior as the Scientific and Management Authorities to implement the treaty. Under this treaty, countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations, by regulating the import, export and re-export of CITES-listed animal and plant species (*http://www.cites.org*). As discussed under Factor B, we do not consider international trade under CITES to be a threat to the Margaretta's hermit. Therefore, CITES is an effective mechanism to control international trade through valid CITES permits. Any international trade that occurs in the future would be effectively regulated under CITES.

Successful efforts to protect the last site known to harbor the Margaretta's hermit from further development occurred in the mid-1980s (Pereira 2007, p. 2), and a portion of this area was designated as the Córrego Grande Biological Reserve in 1989 (Costa 2007, p. 20). However, nearly the entire site burned in 1986, and the subspecies has not been recorded there since that time (Willis and Oniki 2002, p. 21). The Margaretta's hermit likely also occurred at the Sooretama Biological Reserve in Espírito Santo in 1977 (ICBP 1981, p. 2). Therefore, even with formal designation of protected areas, it is unlikely that the identified threats to the Margaretta's hermit are sufficiently addressed at these sites.

Although there is a wide variety of regulatory mechanisms in Brazil that require protection of the Margaretta's hermit and its habitat throughout the subspecies' potentially occupied range, there are government-sponsored measures that remain in place in Brazil that continue to facilitate potentially harmful development projects. The existing regulatory mechanisms that apply to the Margaretta's hermit have been difficult to enforce (Scott and Brooke 1985, p. 118, 130; BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; TNC 2007, p. 2; Peixoto and Silva 2007, p. 5). As a result, significant threats to the subspecies' remaining habitats are ongoing (see Factor A). Therefore, when viewed in combination with habitat threats and small population size identified under Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Margaretta's hermit.

Southeastern Rufous-Vented Ground-Cuckoo

Two protected areas, Sooretama Biological Reserve and Doce River State Park, represent the major sites where the southeastern rufous-vented ground-cuckoo may still occur (Scott and Brooke 1985, pp. 125–126; Payne 2005, p. 207). The protective measures potentially implemented at these two areas are considered critical for protecting any remaining populations of the subspecies. However, not all of the identified threats for the subspecies are sufficiently addressed at the two protected areas that may still harbor the southeastern rufous-vented ground-cuckoo (AMDA 2006, p. 2; Barbosa 2007, p. 1; Bruner *et al.* 2001, pp. 125–128; Nunes and Kraas 2000, p. 44).

Although there is a wide variety of regulatory mechanisms in Brazil that require protection of the southeastern rufous-vented ground-cuckoo and its habitat throughout the subspecies' range, there are various government-sponsored measures that remain in place in Brazil that continue to facilitate development projects that could harm the species. The existing regulatory mechanisms, as currently enforced, do not reduce the threats to the species (BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; TNC 2007, p. 2; Neotropical News 1997b, p. 11; Peixoto and Silva 2007, p. 5; Scott and Brooke 1985, p. 118, 130; Venturini *et al.* 2005, p. 68). Therefore, when viewed in combination with habitat threats and small population size identified under Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the southeastern rufous-vented ground-cuckoo.

Summary of Factor D

Regulatory mechanisms exist in Brazil to protect these seven species. In addition, a $13 million grant was awarded for the Sustainable Cerrado Initiative, which seeks to conserve the Cerrado Biome (World Bank 2010, p. 1). However, it is difficult to manage the protected areas, and several challenges still remain to be adequately addressed. The lack of implementation and enforcement, coupled with Brazil's past and current incentives to develop areas which may contain suitable habitat for these species, have resulted in a failure to protect or curb habitat destruction in the species' only known habitats (Factor A). Because we are unaware of any regulatory mechanisms that effectively limit or restrict habitat destruction, we believe that the inadequacy of regulatory mechanisms is a contributory risk factor for these seven species. In summary, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to these seven species.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

All seven species have limited geographic ranges and small population sizes. Their existing populations are extremely localized, and sometimes geographically isolated from one another, leaving them vulnerable to localized extinctions from habitat modification and destruction, natural catastrophic changes to their habitat

(*e.g.,* flood scour, drought); other stochastic disturbances; decreased fitness from reduced genetic diversity; and climate change.

Potential Loss of Genetic Diversity and Stochastic Disturbance and Population Isolation

Under this factor we first explore whether the risks, represented by demographic, genetic, and environmental stochastic events, threaten the continued existence of each of these seven species. All seven species addressed in this rule have limited geographic ranges and small, declining populations. Their existing populations are extremely localized and geographically isolated from one another, leaving them vulnerable to localized extinctions from habitat modification, progressive degradation from erosion or runoff (non-point source pollutants), natural catastrophic changes to their habitat (*e.g.,* drought), other stochastic disturbances, and decreased fitness from reduced genetic diversity. Demographic stochasticity is defined by chance changes in the population growth rate for a species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27).

Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.,* inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences, either by increasing the phenotypic expression (the outward appearance, or observable structure, function, or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related "catastrophic" events (*e.g.,* severe storms, extreme cold spells, wildfire) (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). Each risk will be analyzed specifically for each species.

Small, isolated populations of wildlife species that have gone through a reduction in population numbers can be susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: Natural variation in survival and reproductive success of individuals; chance disequilibrium of sex ratios; changes in gene frequencies due to genetic drift; diminished genetic diversity and associated effects due to inbreeding (*i.e.,* inbreeding depression); dispersal of just a few individuals; a few clutch failures; a skewed sex ratio in recruited offspring over just one or a few years; and chance mortality of just a few reproductive-age individuals. These small populations are also susceptible to natural levels of environmental variability and related "catastrophic" events (*e.g.,* severe storms, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412).

There is very little information available regarding the historic distribution and abundance of the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo. However, these species' historic populations were likely larger and more widely distributed than today, and they likely maintained a minimum level of genetic interchange among local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vilà *et al.* 2002, p. 91; Wang 2004, p. 332).

Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors (Gilpin and Soulé 1986, pp. 25–26). Any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity (Factor E) on a species' population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789). We find that these factors threaten the continued existence of each of these species.

Climate Change

Climate is influenced primarily by long-term patterns in air temperature and precipitation. The exact nature of the impacts of climate change and increasing temperatures on these seven Brazilian species is unknown. However, changes to climatic conditions, such as temperature and precipitation regimes, are occurring and are expected to continue over the next 100 years (Solomon *et al.* 2007, p. 70; Trenberth *et al.* 2007, pp. 252–253, 262–263). For example, NASA researchers found that during one August of the Amazon dry season, there was a distinct pattern of higher rainfall and warmer temperatures over deforested regions (Negri *et al.* 2003, pp. 1306–1320). In other parts of the world, species have been observed to migrate upward in elevation in response to rises in temperature. The species in this final rule may be among the species most vulnerable to extinction due to anticipated increases in temperature because they are not migratory and therefore highly dependent on their habitat (Moore *et al.* 2008, p. 960). Since temperature and precipitation affect ecosystem characteristics, any change in climate is likely to affect these species. El Niño is a disruption of the ocean atmospheric system which affects regional weather and climate such as rainfall. Although we are able to make general predictions about the severity of El Niño events, we are still unable to make reliable, precise projections of changes in El Niño events due to the complexity of the factors

involved in these weather patterns. Periodic climatic and weather patterns such as El Niño and La Niña can cause or exacerbate negative impacts on terrestrial ecosystems and neotropical bird populations (England 2000, p. 86; Holmgren *et al.* 2001, p. 89; Crick 2004, p. 1; Plumart 2007, pp. 1–2; Sorte and Jetz 2010, p. 862). However, future changes in precipitation are uncertain because they depend in part on how these El Niño events might change.

Climate change could potentially affect ecosystems by changes in rainfall patterns, drought, species distributions, and phenology. The probability of species going extinct due to changes in climate increases when ranges are restricted and population numbers decline (IPCC 2007, p. 8; Helmuth 2009, p. 753). This could be experienced by each of these seven Brazilian bird species, which are characterized by limited ranges, restricted habitat requirements, and small, declining populations. Climate change may exacerbate habitat loss or modification of habitats that are affected by deforestation (IPCC 1997, p. 11; Negri *et al.* 2003, pp. 1306–1320). In the Atlantic Forest, increased rainfall in combination with deforestation has increased the frequency and magnitude of landslides, which add to the destruction of these seven birds' habitat. The projected effects of climate change such as increasing temperatures on each of the seven species addressed in this final rule may affect microclimatic conditions, which may in turn lead to the loss of native species due to physiological stress and the loss or alteration of habitat.

For example, trees cool their area of influence through high rates of evapotranspiration, or water loss to the atmosphere from their leaves (Parmesan and Mathews 2005, p. 337). Areas where trees have been replaced with pastures have lower evapotranspiration rates, thus causing local areas to be warmer (Negri *et al.* 2003, p. 1306; Parmesan and Mathews 2005, p. 337). These seven Brazilian species are particularly vulnerable to extinction due to these kinds of environmental changes. Local changes in climate can also act in concert with other threats to the species such as habitat loss and degradation, magnifying the detrimental effects on the seven Brazilian species identified in this rule.

Although we can speculate, climate change models that are currently available are not yet able to make meaningful predictions of local climate change for specific areas (Parmesan and Matthews 2005, p. 354), such as the Atlantic Forest and Cerrado bioregions. In addition, we do not have models to predict how the local climate in the range of these Brazilian bird species will change, and we do not know how any change that may occur would affect these species. Recent models and research suggest that climate change may be an additional stress for species already threatened by other changes to their habitats (McCarty 2001, p. 325; Brook *et al.* 2008, p. 453, Sorte and Jetz 2010, pp. 862–869).

Species-Specific Discussion Under Factor E

Brazilian Merganser

Another factor possibly affecting the Brazilian merganser is increased competition with exotic fish species. The peacock bass (*Cichla* spp.) was introduced into reservoirs within Brazilian merganser habitat. Bass populations may expand and outcompete Brazilian merganser with respect to food (Lamas 2006, p. 152). Although the Brazilian merganser undoubtedly competes with exotic fish species for food, the available information does not suggest that this occurs at a magnitude that threatens the Brazilian merganser. Therefore, we do not find that competition with exotic fish species is a threat to the continued existence of the Brazilian merganser.

Kaempfer's Tody-Tyrant

Sea level rise was suggested to affect Kaempfer's tody-tyrant (BLI 2010c). In Santos Bay on the coast, sea level rise scenarios were conducted based on predictions of increases between 0.5 and 1.5 m (1.64 and 4.92 ft) by the year 2100. Small increases in sea level could cause flooding, erosion, and change salt marsh zones (Alfredini *et al.* 2008, pp. 379–379) within this species' habitat. The Kaempfer's tody-tyrant inhabits riverine lowland forests between 0–50 m (164 ft) above sea level. As sea level rises, there will not only be less habitat available for the Kaempfer's tody-tyrant, but also increased demand for coastal land for human development such as housing as land becomes more scarce. The Kaempfer's tody-tyrant will likely attempt to move inland as its habitat disappears in search of suitable habitat, however, there may not be suitable habitat remaining for the species. Therefore, the species is likely to be affected by continued sea level rise.

Summary of Factor E

In summary, these seven species all have limited geographic ranges and small population sizes and they are subject to ongoing natural and manmade threats that are considered to be imminent. The small and declining numbers that make up the populations of these seven Brazilian species: The Black-hooded antwren, Brazilian Merganser, Cherry-Throated Tanager, Fringe-Backed Fire-Eye, Kaempfer's Tody-Tyrant, Margaretta's Hermit, and the Southeastern Rufous-Vented Ground Cuckoo, make them susceptible to the potential loss of genetic diversity, stochastic disturbance, and population isolation. We assessed the potential risks of loss of genetic diversity and environmentally-stochastic disturbance to each of these seven species populations. We currently do not know if levels of genetic diversity are adequate to sustain populations of these species. We cannot completely predict the effects of the potential loss of genetic diversity and stochastic disturbance and population isolation at this time, but each threat is likely to occur to some extent and may be compounded by the others (Nepstad 2001, pp. 395–407; Brook *et al.* 2008, p. 453). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near these species' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest such as these, and the eventual loss of any small, isolated, and declining populations appears to be inevitable. We expect that these species' increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which will likely further exacerbate the species' vulnerability to local extirpations and eventual extinction.

Climate change has the potential to increase the vulnerability of these seven species to random catastrophic events and other threats. The probability of species going extinct increases when ranges are restricted, habitat is decreased, and population numbers decline (Marini *et al.* 2009, p. 1558). These combined potential threats reduce the ability of these species to cope with other stressors. In addition to their declining numbers, the high level of population fragmentation makes them susceptible to genetic and demographic stochasticity. The magnitude of these threats is high for each of these species because of their reduced ranges and population sizes which result in a reduced ability to adapt to environmental change. We are not able to definitely state, based on the best available information, that climate

change affects these seven species to such a magnitude that it is considered a threat.

However, based on the best scientific and commercial information available, we conclude that these seven species are threatened by potential loss of genetic diversity, environmentally-stochastic disturbance, small, declining populations, and with respect to Kaempfer's tody-tyrant, sea level rise.

Habitat loss is by far the greatest threat to each of these seven species. The threats identified in Factors D and E intensify the effects of habitat loss due to deforestation from activities such as slash and burn agriculture, conversion to livestock pastures and areas of human habitation or industrial development, and conversion to plantations as described in Factor A. Therefore, we find that these seven Brazilian species are at risk of extinction due to other natural and manmade factors such as the potential loss of genetic diversity, stochastic disturbance, and small, declining and isolated populations.

Conclusion and Status Determinations

Section 3 of the Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range." We have carefully assessed the best scientific and commercial information available regarding threats to each of these seven Brazilian bird species. Significant effects have already occurred as a result of habitat loss, and some populations have likely been extirpated. The most significant threat to the seven species in this rule is habitat loss and alteration (Marini *et al.* 2009, p. 1558). Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor each of these seven species (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by these species will have impacts on the species due to each species' fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its reproductive isolation increases.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. Each of these species in this listing rule is highly restricted in its range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and determination apply to each species throughout its entire range.

We find that each of these seven species is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. These species face immediate and significant threats, primarily from the threatened destruction and modification of their habitats due to deforestation and habitat degradation. The habitat conversion is compounded because of these species' small, declining populations and limited distribution. As described earlier, reasons for habitat loss include extensive establishment of agricultural fields (*e.g.,* soy beans, sugarcane, and corn), changes in fire frequencies, plantations (*e.g.,* eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.,* charcoal production, steel plants, and hydropower reservoirs) (Factor A). We determined that the inadequacy of existing regulatory mechanisms is a contributory risk factor that endangers these species' continued existence (Factor D). Although we acknowledge that there is limited information on the specific nature of potential impacts from climate change to the species included in this final rule (Factor E), we are concerned about projected climate change. Stronger and more frequent El Niño events are predicted to occur. These events and rising temperatures associated with climate change, in combination with the potential loss of genetic diversity, stochastic disturbance, and population isolation, are likely to occur. However we are not able to definitely state, based on the best available information, that climate change affects these seven species to such a magnitude that it is considered a threat. We also assessed the potential risks of loss of genetic diversity and environmentally-stochastic disturbance to each of these seven species populations (Factor E). We expect that these species' increased vulnerability to demographic stochasticity and inbreeding will likely further exacerbate the species' vulnerability to local extirpations and eventual extinction.

Based on our analysis, we have no reason to believe that population trends for any of the species addressed in this final rule will improve, nor will the effects of current threats acting on the species be ameliorated in the future.

These species are in danger of extinction throughout all of their ranges. Therefore, on the basis of the best available scientific and commercial information, we are listing the following seven species as endangered under the Act: Black-hooded antwren (*Formicivora erythronotos*), Brazilian merganser (*Mergus octosetaceus*), cherry-throated tanager (*Nemosia rourei*), fringe-backed fire-eye (*Pyriglena atra*), Kaempfer's tody-tyrant (*Hemitriccus kaempferi*), Margaretta's hermit (*Phaethornis malaris margarettae*), and southeastern rufous-vented ground-cuckoo (*Neomorphus geoffroyi dulcis*).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any has been proposed or designated. However, given that the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo are not native to the United States, we are not designating critical habitat in this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo. These prohibitions, under 50 CFR 17.21, in

part, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) any endangered wildlife species within the United States or upon the high seas; or to import or export; to deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or to sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and 17.32 for threatened species. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Endangered Species Program, U.S. Fish and Wildlife Service (*see* the **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding new entries for "Antwren, Black-hooded," "Cuckoo, Southeastern Rufous-vented Ground," "Fire-eye, Fringe-backed," "Hermit, Margaretta's," "Merganser, Brazilian," "Tanager, Cherry-throated," and "Tody-tyrant, Kaempfer's" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Antwren, black-hooded.	*Formicivora erythronotos*.	Brazil	Entire	E	774	NA	NA
*	*	*	*	*	*	*	
Fire-eye, fringed-backed.	*Pyriglena atra*	Brazil	Entire	E	774	NA	NA
*	*	*	*	*	*	*	
Ground-cuckoo, southeastern rufous-vented.	*Neomorphus geoffroyi dulcis*.	Brazil	Entire	E	774	NA	NA
*	*	*	*	*	*	*	
Hermit, Margaretta's	*Phaethornis malaris margarettae*.	Brazil	Entire	E	774	NA	NA
*	*	*	*	*	*	*	
Merganser, Brazilian	*Mergus octosetaceus*.	Brazil, Argentina, Paraguay.	Entire	E	774	NA	NA
*	*	*	*	*	*	*	
Tanager, cherry-throated.	*Nemosia rourei*	Brazil	Entire	E	774	NA	NA
*	*	*	*	*	*	*	
Tody-tyrant, Kaempfer's.	*Hemitriccus kaempferi*.	Brazil	Entire	E	774	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–32628 Filed 12–27–10; 8:45 am]

BILLING CODE 4310–55–P

Reader Aids

Federal Register

Vol. 75, No. 248

Tuesday, December 28, 2010

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids **202–741–6000**
Laws **741–6000**

Presidential Documents
Executive orders and proclamations **741–6000**
The United States Government Manual **741–6000**

Other Services
Electronic and on-line services (voice) **741–6020**
Privacy Act Compilation **741–6064**
Public Laws Update Service (numbers, dates, etc.) **741–6043**
TTY for the deaf-and-hard-of-hearing **741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, DECEMBER

74605–75144 1
75145–75362 2
75363–75618 3
75619–75844 6
75845–76250 7
76251–76610 8
76611–76920 9
76921–77520 10
77521–77748 13
77749–78150 14
78151–78586 15
78587–78874 16
78875–79260 17
79261–79946 20
79947–80286 21
80287–80672 22
80673–81076 23
81077–81370 27
81371–81816 28

CFR PARTS AFFECTED DURING DECEMBER

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.

2 CFR
1536 80287

3 CFR
Proclamations:
8606 74605
8607 75613
8608 75615
8609 75617
8610 75845
8611 75847
8612 76251
8613 76611
8614 76613
8615 77519
8616 78149
8617 80671
8618 81077
8619 81083
8620 81085
Executive Orders:
13560 78875
Administrative Orders:
Presidential Determinations:
No. 2011-01 of October 6, 2010 75849
No. 2011-02 of October 8, 2010 75851
No. 2011-03 of October 15, 2010 75853
No. 2011-04 of October 25, 2010 75855
No. 2011-05 of November 19, 2010 75865
Memorandums:
Memorandum of December 20, 2010 80673

5 CFR
630 75363
890 76615
892 76615
1600 78877
1604 78877
1605 74607
1650 78877
1651 78877
1690 78877
5901 79261
Proposed Rules:
732 77783

6 CFR
5 ..... 79947, 81371

7 CFR
2 79949
6 76253
63 75867
205 77521
271 78151
272 78151
273 78151
276 78151
301 ..... 78587, 81087
319 81372
802 76254
946 77749
1463 76921
Proposed Rules:
35 77561
201 ..... 78881, 78932
319 7515
916 77563
917 77563
930 77564

8 CFR
103 79264
214 79264
274a 79264

9 CFR
78 81090

10 CFR
50 76923
51 ..... 81032, 81037
430 ..... 78810, 80289
431 80292
1010 75373
Proposed Rules:
70 80730
71 75641
73 ..... 75641, 79312
430 ..... 75290, 80731
850 80734

12 CFR
4 75574
21 75576
25 79278
203 80675
226 80675
228 79278
327 79286
345 79278
510 75583
563 75586
563e 79278
585 81377
701 ..... 80677, 81378
708a 80678, 81378
708b 80678, 81378
906 81395
950 76617
980 76617
1207 81395
1252 81405
1264 76617
1266 76617
1269 76617

1272.....76617
1281.....81096
1807.....75376
Proposed Rules:
213.....78632
226.....78636
235.....81722
701.....75648, 80634
704.....75648
741.....75648
745.....80367
Ch. XIII.....79982
1263.....81145

14 CFR

29.....77524
39 .....74608, 74610, 74616, 75868, 75870, 75872, 75878, 75882, 76624, 78588, 78591, 78594, 78596, 78599, 78881, 78883, 79950, 79952, 80293, 81409, 81412, 81417, 81420, 81422, 81424, 81427, 81430, 81433
71 .....76924, 79293, 79294, 79295, 81110, 81436, 81437, 81438, 81439, 81440, 81441, 81442
97 .....76626, 76628, 80680, 80682
431.....75619, 75621
Proposed Rules:
25 .....76647, 77569, 80735
29.....79312
39 .....74663, 74665, 74668, 74670, 75159, 75932, 75934, 76317, 76926, 77570, 77790, 77793, 77796, 78177, 78937, 79317, 79984, 79988, 79990, 80370, 80738, 80742, 80744, 81508, 81512
65.....75649
71 .....76648, 76650, 76652, 77572, 77573, 77574, 78645, 81514, 81516, 81517, 81518
73.....80372
135.....80746
139.....76928

15 CFR

730.....78154
734.....78154
736.....78154
742.....78154
744.....78154, 78883
745.....78154
806.....76630, 80294
902.....77528, 78344
950.....81110
Proposed Rules:
732.....76653, 81152
738.....76653, 81152
740.....76653, 81152
743.....76653, 81152
758.....76653, 81152
774 .....76653, 76664, 81152
922.....76319

16 CFR

23.....81443
322.....75092
1102.....76832
1219.....81766, 81789
1220.....81766, 81789
1500.....81766
1508.....81788
1509.....81788
Proposed Rules:
310.....78179

17 CFR

232.....80296
44.....78892
Proposed Rules:
1 .....77576, 78185, 80174, 80572
16.....80572
21.....78185
23 .....75432, 76666, 80638, 81519
30.....77588
38.....80572
39 .....77576, 78185, 80747
43.....76140, 76930
45.....76574
49.....80898
155.....80638
165.....75728
190.....75162, 75432
229 .....80374, 80948, 80978
239.....80374
240 .....75208, 77306, 79320, 79992, 80174
242.....75208
249 .....77306, 79320, 80374, 80948, 80978
275.....75650, 77052
279.....77052

18 CFR

284.....80685
342.....80300
Proposed Rules:
35.....75336
40 .....80391, 80397, 81152, 81157
284.....80758

19 CFR

Proposed Rules:
351.....81533

20 CFR

404.....76256
418.....75884
903.....81454
Proposed Rules:
641.....78939

21 CFR

101.....78155
510 .....79295, 79955, 81455
520.....76259
522.....76260, 81455
524.....79295
1308.....79296
Proposed Rules:
58.....80011
101.....76526
170.....81536
184.....81536
186.....81536
500.....79320
570.....81536
1141.....75936

22 CFR

Proposed Rules:
121.....76930, 76935

24 CFR

5.....76260
84.....76260
85.....76260
3500.....74620

26 CFR

1 .....75896, 75897, 76262, 78157, 78160, 80697, 81456, 81457
31.....75896, 75897
40.....75897
301 .....75896, 75897, 78897
602.....75896, 80697
Proposed Rules:
1 .....75439, 76321, 76940, 78940, 81543
54.....81544
300.....76940
301.....75439, 76940

27 CFR

Proposed Rules:
9.....78944

28 CFR

2.....81457
16.....80313
541.....76263

29 CFR

403.....74936, 75904
1926.....80315
2700.....81459
4022.....78161
4044.....74622, 78161
Proposed Rules:
104.....80410
1910.....77798
1926.....77798
2590.....81544

30 CFR

250.....76632, 80717
926.....81112
934.....81120
943.....81122
Proposed Rules:
75.....81165

31 CFR

103.....75593, 75607
208.....80315
210.....80335
357.....78900
363.....78900
594.....75904
595.....75904
597.....75904
Proposed Rules:
103.....76677

32 CFR

241.....77753
Proposed Rules:
174.....78946
182.....81547

33 CFR

53.....79956
110.....76275
117 .....76279, 76632, 78162, 78163, 78601, 81125
154.....79961
155.....79961
165 .....75145, 76280, 77756, 80717, 81464, 81467, 81469
167.....77529
Proposed Rules:
117 .....76322, 76324, 76688, 81176
165.....76328, 76943

37 CFR

381.....74623
386.....75624

38 CFR

17.....78901
74.....80720
Proposed Rules:
63.....79323

39 CFR

20.....75151
111.....76282
232.....78915
Proposed Rules:
3055.....75655

40 CFR

36.....80287
51.....80118
52 .....74624, 75625, 75628, 77698, 77758, 78164, 78167, 78602, 79300, 80340, 81471, 81474, 81477, 81480, 81484
58.....81126
62.....78916
63.....77760
72.....75060
78.....75060
80.....76790, 79964
81.....70302
98 .....74774, 75060, 79092, 81338
112.....79961
124.....77230
131.....75762
144.....77230
145.....77230
146.....77230
147.....77230
180 .....74628, 74634, 75389, 76284, 80343, 80346
261.....78918
262.....70304
268.....78918
271.....76633
302.....78918
1500.....75628
1501.....75628
1502.....75628
1503.....75628
1504.....75628
1505.....75628
1506.....75628
1507.....75628
1508.....75628
Proposed Rules:
Ch. I.....78198
49.....76331
50.....80420
51.....80420
52 .....74673, 75656, 75658, 76332, 77595, 77798, 78197, 78646, 78949, 78950, 79327, 81179, 81555
58.....76336
62.....78952
63.....75937,77799, 80220, 80761

82.....78558
85.....76337
86.....76337
98.....81350, 81366
168.....74673
262.....79328
271.....76691, 81187
600.....76337

41 CFR

300–3.....80350
Ch. 301.....80350
301–10.....80350
301–12.....80350
301–30.....80350
301–70.....80350
302–1.....80350
302–2.....80350
302–3.....80350
302–7.....80350
302–11.....80350
303–70.....80350

42 CFR

424.....76293
484.....81138

Proposed Rules:

5.....79329, 79330
489.....80762
1001.....81556

44 CFR

64.....80351
65 .....78606, 78607, 78610, 78613, 78615, 81484
67 .....77762, 78617, 78926

Proposed Rules:

67 .....75941, 75945, 75949, 77598, 78647, 78650, 78654, 78664

45 CFR

158.....74864

Proposed Rules:

147.....81544
154.....81004

46 CFR

45.....78928
71.....78064
114.....78064
115.....78064
122.....78064
170.....78064
171.....78064
172.....78064
174.....78064
175.....78064
176.....78064
178.....78064
179.....78064
185.....78064

Proposed Rules:

2.....74674

47 CFR

0.....75814, 78169
1.....81488
15.....75814
20.....77781
54.....75393
63.....81488
73 .....76293, 76294, 80354, 81491
97.....78169

Proposed Rules:

5.....81558
25.....77602
73 .....80013, 80425, 81190

48 CFR

Ch. 1.....77722, 77745
1.....77723
2 .....77723, 77727, 77733, 77737
3.....77745
4.....77733
5.....77745
7.....77745
8.....77733
9.....77733, 77739
10.....77745
15.....77741
17.....77733
18.....77733
19.....77727, 77737
22.....77723
31.....77741
33.....77727
35.....77733
41.....77733
52 .....77723, 77727, 77737, 77739, 77741
216.....78619
222.....76295
225.....76297
237.....78619
252.....76295, 76297

Proposed Rules:

10.....78953
201.....75444
211.....80426
212.....80426
215.....75550, 76692
234.....75550, 76692
242.....75550, 76692
244.....75550, 76692
245 .....75444, 75550, 76692
252 .....75444, 75550, 76692, 80426

49 CFR

219.....79308
225.....75911
572.....76636
578.....79978

Proposed Rules:

7.....81191
171.....80765
173.....80765
178.....80765
180.....80765
Ch. 2.....76345
209.....75448
213.....75448
214.....75448
215.....75448
217.....75448
218.....75448
219.....75448
220.....75448
221.....75448
222.....75448
223.....75448
224.....75448
225.....75448
227.....75448
228.....75448
229.....75448
230.....75448
231.....75448
232.....75448
233.....75448
234.....75448
235.....75448
236.....75448
238.....75448
239.....75448
240.....75448
241.....75448
383.....80014
384.....80014
390.....80014
391.....80014
392.....80014
501.....76692
509.....76692
510.....76692
511.....76692
512.....76692
520.....76692
523.....76692
525.....76692
526.....76692
531.....76337, 80430
533.....76337, 80430
571.....76186, 76692
585.....76186
821.....80452
826.....80452
1030.....76946
1031.....76946
1032.....76946
1033.....76946
1034.....76946
1035.....76946
1036.....76946
1037.....76946
1038.....76946
1039.....76946

50 CFR

17 .....75913, 76086, 77962, 78430, 81794
21.....75153, 81139
253.....78619
300.....74640, 78929
622 .....74648, 74650, 74656, 76300, 76874, 76890, 79309
635 .....75416, 76302, 79309
648 .....74661, 76315, 76925, 80720, 81142, 81498, 81505
660 .....75417, 75638, 75639, 78344
679.....77535, 78172

Proposed Rules:

17 .....77801, 77817, 78030, 78094, 78514
217.....80260, 80773
222.....81201
223 .....77476, 77496, 77602
648.....76351
660.....75449
679 .....76352, 76372, 79330

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2965/P.L. 111–321
Don't Ask, Don't Tell Repeal Act of 2010 (Dec. 22, 2010; 124 Stat. 3515)

H.R. 3082/P.L. 111–322
Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Dec. 22, 2010; 124 Stat. 3518)

Last List December 22, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.