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

WHEN: Tuesday, February 22, 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

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

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7 CFR Parts 407 and 457

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7 CFR Part 550

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7 CFR Parts 1410, 1436, 1437, 1468, and 1469

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7 CFR Parts 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3411, 3415, and 3430

RIN 0524–AA63

Establishment of New Agency; Revision of Delegations of Authority

AGENCY: Office of the Secretary, Federal Crop Insurance Corporation, Agricultural Research Service, Commodity Credit Corporation, and National Institute of Food and Agriculture, USDA.

ACTION: Final rule.

SUMMARY: This document amends a number of regulations of the Department of Agriculture (USDA) principally to reflect the establishment of the National Institute of Food and Agriculture and the abolishment of the Cooperative State Research, Education, and Extension Service, as mandated by section 251(f)(2) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971(f)(2)) (as added by section 7511 of the Food, Conservation, and Energy Act of 2008 (FCEA), Pub. L. 110–246). This rule also makes a number of miscellaneous amendments to the delegations of authority in 7 CFR part 2, as summarized below.

DATES: This rule is effective January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Matthew Lockhart; Senior Policy Specialist; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; Voice: 202–570–7410; Fax: 202–401–7752; E-mail: *mlockhart@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Establishment of National Institute of Food and Agriculture

On October 1, 2009, the Secretary of Agriculture (Secretary) established within USDA the National Institute of Food and Agriculture (NIFA), as mandated by section 251(f)(2) of the Department of Agriculture Reorganization Act of 1994 (Reorganization Act) (7 U.S.C. 6971(f)(2)). Section 251(f)(2) was added by section 7511 of the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246. Pursuant to the FCEA, the Secretary transferred to NIFA, effective October 1, 2009, the authorities (including all budget authorities, available appropriations, and personnel), duties, obligations, and related legal and administrative functions prescribed by law or otherwise granted to the Secretary, the Department, or any other agency or official of the Department under the research, education, economic, cooperative State research programs, cooperative extension and education programs, international programs, and other functions and authorities delegated by the Under Secretary for Research, Education, and Economics ("REE") to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) pursuant to 7 CFR 2.66, and any and all other authorities administered by the Administrator of CSREES. Accordingly, the agency known as CSREES was abolished upon establishment of NIFA.

This rule makes a number of nomenclature amendments to various USDA regulations to reflect the establishment of NIFA and the abolishment of CSREES. For example, references to "CSREES" are changed to "NIFA," references to "CSREES Administrator" are changed to "NIFA Director," *etc.*

Delegations of Authority

This rule also makes other changes to existing delegations in 7 CFR part 2 by correcting references and citations and removing obsolete authorities. Additionally, the pollinator protection authorities in section 1672(h) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925(h)), as added by section 7204 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, are being delegated among NIFA, the Agricultural Research Service, and the Animal and Plant Health Inspection Service.

This rulemaking also includes changes to some of the delegations previously reserved to the Secretary. The authorities at § 2.21(b)(1)(i), (b)(1)(ii), and (b)(1)(iii) have been removed as they are related to the administration of two of the NIFA formula grant programs—McIntire-Stennis Cooperative Forestry Research Program (16 U.S.C. 582a–1) and the Animal Health and Disease Research Program (7 U.S.C. 3195).

NIFA Regulations (at 7 CFR 3400s)

Within the next three years, NIFA will be establishing subparts under 7 CFR part 3430—Competitive and Noncompetitive Nonformula Federal Assistance Programs—General Award Administrative Provisions for the Special Research Grants Program (currently at 7 CFR part 3400), Rangeland Research Grants Program (currently at 7 CFR part 3401), Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program (currently at 7 CFR part 3402), Higher Education Challenge Grants Program (currently at 7 CFR part 3405), and Biotechnology Risk Assessment Research Grants Program (currently at 7 CFR part 3415). Please note subpart L for the 1890 Institutional Capacity Building Grants Program (currently at 7 CFR part 3406) will be promulgated by December 31, 2010.

Section 7406 of FCEA amended the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i) to create the Agriculture and Food Research Initiative and, thus, eliminated the National Research Initiative (NRI). Hence, NIFA is canceling the regulations at 7 CFR part 3411, National

Research Initiative Competitive Grants Program. Please note that these regulations at 7 CFR part 3411 focused primarily on pre-award and award policies and procedures. Since there are some active NRI awards, 7 CFR part 3430 Subpart E—Post-Award and Closeout, will apply (*i.e.,* post-award policies and procedures) to these active awards, except as described under "**DATES:** *Effective Date*" in 74 FR 45736 (Sept. 4, 2009).

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Orders 12866 and 12988. This action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those Acts. This rule contains no 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 Parts 1b, 2, 8, 12, 23, 407, 457, 550, 1410, 1436, 1437, 1468, 1469, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3411, 3415, and 3430

Authority delegations (Government agencies), Agricultural research, Agricultural education, Agricultural extension, Federal assistance, Food and agricultural sciences, Grants program—agriculture, Grants administration.

Under the authority of the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246, Title 7 of the Code of Federal Regulations is amended accordingly as set forth below:

PART 1b—NATIONAL ENVIRONMENTAL POLICY ACT

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

Authority: 5 U.S.C. 301; 42 U.S.C. 4321 *et seq.;* E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1978 Comp., p. 123; E.O. 12114, 3 CFR, 1980 Comp., p. 356; 40 CFR 1507.3.

§ 1b.4 [Amended]

■ 2. In § 1b.4, remove and reserve paragraph (b)(3).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

§§ 2.21, 2.61, 2.65, 2.66 [Amended]

■ 4. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
2.21(a)(1)(cli)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.
2.21(a)(1)(cliii)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.
2.61(a)(2)	Administrator, Cooperative State Research, Education, and Extension Service.	Director, National Institute of Food and Agriculture.
2.65(a)(59)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.
2.66(a) introductory text	Under Secretary for Research, Education, and Extension.	Under Secretary for Research, Education, and Economics (Under Secretary).
2.66(a) introductory text	Administrator, Cooperative State Research, Education, and Extension Service.	Director, National Institute of Food and Agriculture, who shall report directly to the Under Secretary.
2.66(a)(119)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.
2.66(a)(121)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.

■ 5. Amend § 2.21 as follows:
■ a. Remove and reserve paragraphs (a)(1)(xcvi), (b)(1)(i), (b)(1)(ii), and (b)(1)(iii); and
■ b. Revise paragraphs (a)(1)(lii), (a)(1)(lxxx), and (a)(1)(cliv), to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(lii) Establish and administer competitive grants to Hispanic-serving Institutions for the purpose of promoting and strengthening the ability of Hispanic-serving Institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3241).

* * * * *

(lxxx) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925), except as delegated to the Under Secretary for Marketing and Regulatory Programs in § 2.22(a)(2)(xli).

* * * * *

(xcvi) [Reserved]

* * * * *

(cliv) Consider the results of the annual review performed by the National Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

* * * * *

(b) * * *

(1) * * *

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

* * * * *

■ 6. Amend § 2.22 by adding new paragraph (a)(2)(xli) to read as follows:

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) * * *

(2) * * *

(xli) Section 1672(h)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925(h)(3)) regarding honey bee pest and pathogen surveillance.

* * * * *

■ 7. Amend § 2.65 as follows:

■ a. Remove and reserve paragraph (a)(47); and

■ b. Add new paragraph (a)(113), to read as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *

(47) [Reserved]

* * * * *

(113) Carry out pollinator health research activities (7 U.S.C. 5925(h)(2)).

* * * * *

■ 8. Amend § 2.66 as follows:

■ a. Remove and reserve paragraphs (a)(49), (a)(56), (a)(116), and (a)(118); and

■ b. Revise paragraphs (a)(42), (a)(107) and (a)(122), to read as follows:

§ 2.66 Director, National Institute of Food and Agriculture.

(a) * * *

(42) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925), except as delegated to the Administrator, Agricultural Research Service in § 2.65(a)(113) and the Administrator, Animal and Plant Health Inspection Service in § 2.80(a)(47).

* * * * *

(49) [Reserved]

* * * * *

(56) [Reserved]

* * * * *

(107) Establish and administer competitive grants to Hispanic-serving Institutions for the purpose of promoting and strengthening the ability of Hispanic-serving Institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3241).

* * * * *

(116) [Reserved]

* * * * *

(118) [Reserved]

* * * * *

(122) Consider the results of the annual review performed by the National Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

* * * * *

■ 9. Amend § 2.80 by adding new paragraph (a)(47) to read as follows:

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(47) Section 1672(h)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925(h)(3)) regarding honey bee pest and pathogen surveillance.

* * * * *

PART 8—4–H CLUB NAME AND EMBLEM

■ 10. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 707.

§§ 8.2, 8.6, 8.7, 8.9 [Amended]

■ 11. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
8.2	Administrator of the Cooperative State Research, Education, and Extension Service.	Director of the National Institute of Food and Agriculture.
8.6(a) introductory text	Administrator of the Cooperative State Research, Education, and Extension Service.	Director of the National Institute of Food and Agriculture.
8.6(b)	Administrator of the Cooperative State Research, Education, and Extension Service.	Director of the National Institute of Food and Agriculture.
8.7(a)(4)	Administrator of the Cooperative State Research, Education, and Extension Service.	Director of the National Institute of Food and Agriculture.
8.9(a)(3)	Administrator of the Cooperative State Research, Education, and Extension Service.	Director of the National Institute of Food and Agriculture.

■ 11a. Amend § 8.3 by:

■ a. Revising the definition of *Cooperative Extension Service;*

■ b. Removing the definition of *Cooperative State Research, Education, and Extension Service, United States Department of Agriculture;* and

■ c. Adding a definition of *National Institute of Food and Agriculture* in alphabetical order to read as follows:

§ 8.3 Definitions.

* * * * *

Cooperative Extension Service, as used in this part includes the entire Cooperative Extension System consisting of the National Institute of Food and Agriculture, United States Department of Agriculture; the State Cooperative Extension Services; and the County Cooperative Extension Services.

* * * * *

National Institute of Food and Agriculture as used in this part means the Federal agency within the United States Department of Agriculture that administers Federal agricultural cooperative extension programs.

* * * * *

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

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

Authority: 16 U.S.C. 3801 *et seq.*

■ 13. Amend § 12.2 as follows:

■ a. Amend paragraph (a) to remove the definition of *CSREES;* and

■ b. Amend paragraph (a) to add a definition of *NIFA* in alphabetical order to read as follows:

§ 12.2 Definitions.

* * * * *

NIFA means the National Institute of Food and Agriculture, an agency of

USDA which is generally responsible for coordinating the information and educational programs of USDA.

* * * * *

■ 14. Amend § 12.6 by revising paragraph (d) to read as follows:

§ 12.6 Administration.

* * * * *

(d) *Administration by NIFA.* The NIFA shall coordinate the related information and education program for USDA concerning implementation of this rule.

* * * * *

PART 23—STATE AND REGIONAL ANNUAL PLANS OF WORK

■ 15. The authority citation for part 23 continues to read as follows:

Authority: Sec. 508, 86 Stat. 674 (7 U.S.C. 2668).

§§ 23.2, 23.10 [Amended]

■ 16. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the center column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
23.2(a)	Administrators of the Extension Service and the Cooperative State Research Service for extension and research programs respectively.	Director of the National Institute of Food and Agriculture.
23.10(a)	Extension Service and the Cooperative State Research Service.	National Institute of Food and Agriculture.

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS

■ 17. The authority citation for part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

§ 407.9 [Amended]

■ 18. Amend § 407.9 by:

■ a. Revising the definition of *Agricultural experts;* and

■ b. Revising the definition of *Organic agricultural industry* to read as follows:

§ 407.9 Group risk plan common policy.

* * * * *

Agricultural experts. Persons who are employed by the National Institute of Food and Agriculture or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

* * * * *

Organic agricultural industry. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 19. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 20. Amend § 457.106 by revising the definition of *Good farming practices* to read as follows:

§ 457.106 Texas citrus tree crop insurance provisions.

* * * * *

Good farming practices. The cultural practices generally in use in the county for the trees to have normal growth and vigor and recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

* * * * *

■ 21. Amend § 457.130 by revising the definition of *Good farming practices* to read as follows:

§ 457.130 Macadamia tree crop insurance provisions.

* * * * *

Good farming practices. The cultural practices generally in use in the county for the crop to have normal growth and vigor, and are those recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the area.

* * * * *

■ 22. Amend § 457.137 by revising the definition of *Good farming practices* to read as follows:

§ 457.137 Green pea crop insurance provisions.

* * * * *

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the green pea processor contract with the processing company, and recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

* * * * *

■ 23. Amend § 457.149 by revising the definition of *Adapted* to read as follows:

§ 457.149 Table grape crop insurance provisions.

* * * * *

Adapted. Varieties that are recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

* * * * *

■ 24. Amend § 457.151 by revising the definition of *Good farming practices* to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

* * * * *

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce a normal stand, and are those recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

* * * * *

■ 25. Amend § 457.154 by revising the definition of *Good farming practices* to read as follows:

§ 457.154 Processing sweet corn crop insurance provisions.

* * * * *

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the sweet corn processor contract with the processing company, and recognized by the National Institute of Food and Agriculture as compatible

with agronomic and weather conditions in the county.

* * * * *

■ 26. Amend § 457.155 by revising the definition of *Good farming practices* to read as follows:

§ 457.155 Processing bean crop insurance provisions.

* * * * *

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the bean processor contract with the processing company, and recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the county.

* * * * *

PART 550—GENERAL ADMINISTRATIVE POLICY FOR NON–ASSISTANCE COOPERATIVE AGREEMENTS

■ 27. The authority citation for part 550 continues to read as follows:

Authority: Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(b)).

§ 550.28 [Amended]

■ 28. In the table below, for the section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
550.28(b)(1)	Cooperative State Research, Education, and Extension Service (CSREES).	National Institute of Food and Agriculture (NIFA).

PART 1410—CONSERVATION RESERVE PROGRAM

■ 29. The authority citation for part 1410 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 [Amended]

■ 30. In the table below, for the section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
1410.1(h)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture (NIFA).

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

■ 31. The authority citation for part 1436 continues to read as follows:

Authority: 7 U.S.C. 7971 and 8789; 15 U.S.C. 714–714p.

§§ 1436.6, 1436.9 [Amended]

■ 32. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
1436.6(a)(5)	Cooperative State Research, Education, and Extension Service (CSREES).	National Institute of Food and Agriculture (NIFA).
1436.6(b)(6)	CSREES	NIFA.
1436.9(d)(3)(iii)	CSREES	NIFA.

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

■ 33. The authority citation for part 1437 continues to read as follows:

Authority: 7 U.S.C. 7333; 15 U.S.C. 714 *et seq.;* and 48 U.S.C. 1469.

§ 1437.102 [Amended]

■ 34b. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
1437.102(b)(4)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.

■ 34a. Amend § 1437.3 by revising the definition of *Good farming practices* to read as follows:

§ 1437.3 Definitions.

* * * * *

Good farming practices means the cultural practices generally used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. These practices are normally those recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions.

* * * * *

PART 1468—CONSERVATION FARM OPTION

■ 35. The authority citation for part 1468 continues to read as follows:

Authority: 16 U.S.C. 3839bb.

§ 1468.3 [Amended]

■ 36. Amend § 1468.3 by revising the definition of *Local work group* to read as follows:

§ 1468.3 Definitions.

* * * * *

Local work group means representatives of FSA, the National Institute of Food and Agriculture (NIFA), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to CFO implementation.

* * * * *

PART 1469—CONSERVATION SECURITY PROGRAM

■ 37. The authority citation for part 1469 continues to read as follows:

Authority: 16 U.S.C. 3830 *et seq.*

§ 1469.3 [Amended]

■ 38. Amend § 1469.3 by revising the definition of *Local work group* to read as follows:

§ 1469.3 Definitions.

* * * * *

Local work group means representatives of local offices of FSA, the National Institute of Food and Agriculture, the conservation district, and other Federal, State, and local government agencies, including Indian Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

* * * * *

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

■ 39. The authority citation for part 3400 continues to read as follows:

Authority: 7 U.S.C. 450i(c).

§§ 3400.1, 3400.2, 3400.4, 3400.5, 3400.6, 3400.7, 3400.8, 3400.9, 3400.10, 3400.14, 3400.20 [Amended]

■ 40. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3400.1(b)	Administrator of CSREES	Director of NIFA.
3400.2(c)	Administrator	Director.
3400.2(e)	Administrator	Director.
3400.2(g)	Administrator	Director.
3400.2(i)	Administrator	Director.
3400.4(c)(14)	Administrator	Director.
3400.4(c)(15)	Administrator	Director.
3400.5(a)	Administrator	Director.
3400.5(a)	CSREES	NIFA.
3400.5(b)	Administrator's	Director's.
3400.5(b)	Administrator	Director.
3400.6(a)	Administrator	Director.
3400.6(b)(1)(i)	Administrator	Director.
3400.6(b)(1)(vi)	Administrator	Director.
3400.7(b)(1)	Administrator	Director.
3400.7(c)	Administrator	Director.
3400.8	CSREES	NIFA.
3400.9	Administrator	Director.
3400.9	Administrator's	Director's.
3400.10	Administrator	Director.
3400.14(b)	Administrator	Director.
3400.20(a)	CSREES	NIFA.
3400.20(c)	CSREES	NIFA.
3400.20(d)	CSREES	NIFA.

■ 40a. Amend § 3400.2 by revising paragraph (a) to read as follows:

§ 3400.2 Definitions.

* * * * *

(a) *Director* means the Director of the National Institute of Food and Agriculture (NIFA) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

* * * * *

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

■ 41. The authority citation for part 3401 continues to read as follows:

Authority: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

§§ 3401.1, 3401.2, 3401.6, 3401.7, 3401.8, 3401.9, 3401.10, 3401.11, 3401.12, 3401.16 [Amended]

■ 42. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3401.1(a)	Administrator of the Cooperative State Research, Education, and Extension Service (CSREES).	Director of the National Institute of Food and Agriculture (NIFA).
3401.2(a)	*Administrator* means the Administrator of CSREES	*Director* means the Director of NIFA.
3401.2(c)	Administrator	Director.

Section	Remove	Add
3401.2(e)	Administrator	Director.
3401.2(g)	Administrator	Director.
3401.2(i)	Administrator	Director.
3401.6(c)(13)(i)	CSREES	NIFA.
3401.6(c)(14)	Administrator	Director.
3401.6(c)(15)	Administrator	Director.
3401.6(c)(16)	CSREES's	NIFA's.
3401.6(c)(16)	CSREES	NIFA.
3401.6(c)(16)	Form CSREES–1234	Form NIFA–1234.
3401.7(a)	Administrator	Director.
3401.7(a)	CSREES	NIFA.
3401.7(b)	Administrator's	Director's.
3401.7(b)	Administrator	Director.
3401.8(a)	Administrator	Director.
3401.8(b)(1)(i)	Administrator	Director.
3401.8(b)(1)(vi)	Administrator	Director.
3401.9(b)(1)	Administrator	Director.
3401.9(c)	Administrator	Director.
3401.10	CSREES	NIFA.
3401.11	Administrator	Director.
3401.11	Administrator's	Director's.
3401.12	Administrator	Director.
3401.16(b)	Administrator	Director.

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

■ 43. The authority citation for part 3402 continues to read as follows:

Authority: 7 U.S.C. 3316.

§§ 3402.1, 3402.3, 3402.6, 3402.7, 3402.10, 3402.11, 3402.12, 3402.14, 3402.20, 3402.21, 3402.23 [Amended]

■ 44. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3402.1(a)	Cooperative State Research, Education, and Extension Service (CSREES).	National Institute of Food and Agriculture (NIFA).
3402.1(a)	by CSREES	by NIFA.
3402.3	CSREES	NIFA.
3402.6(a)	Each application must include a "Proposal Cover Page" (Form CSREES–2002), "Project Summary" (Form CSREES–2003), "Budget" (Form CSREES–2004) and National Environmental Policy Act Exclusions Form (Form CSREES—2006).	Each application must include a "Proposal Cover Page" (Form NIFA–2002), "Project Summary" (Form NIFA–2003), "Budget" (Form NIFA–2004) and National Environmental Policy Act Exclusions Form (Form NIFA—2006).
3402.7(a)(4)(i)	CSREES	NIFA.
3402.7(b)	CSREES	NIFA.
3402.10	CSREES	NIFA.
3402.11	Form CSREES–2002	Form NIFA–2002.
3402.12	Form CSREES–2003	Form NIFA–2003.
3402.14	Form CSREES–2004	Form NIFA–2004.
3402.20	CSREES	NIFA.
3402.21	CSREES	NIFA.
3402.23(a)	Form CSREES–2010	Form NIFA–2010.
3402.23(a)	CSREES	NIFA.
3402.23(b)	CSREES'	NIFA's.
3402.23(b)	CSREES	NIFA.
3402.23(b)	*http://cris.csrees.usda.gov*	*http://cris.nifa.usda.gov*.

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

■ 45. The authority citation for part 3403 continues to read as follows:

Authority: 15 U.S.C. 638.

§§ 3403.1, 3403.9, 3403.13, 3403.14, 3403.15 [Amended]

■ 46. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3403.1(a)	CSREES	NIFA.
3403.9	CSREES	NIFA.

Section	Remove	Add
3403.13(a)(11)	CSREES	NIFA.
3403.14(b)(2)	CSREES	NIFA.
3403.14(b)(3)	CSREES	NIFA.
3403.14(b)(4)	CSREES	NIFA.
3403.14(c)	CSREES	NIFA.
3403.14(e)(1)	CSREES	NIFA.
3403.14(e)(1)(ii)(C)	CSREES	NIFA.
3403.14(e)(1)(iii)	CSREES	NIFA.
3403.14(e)(1)(iii)	COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE.	NATIONAL INSTITUTE OF FOOD AND AGRICULTURE.
3403.14(e)(2)(iii)(E)	COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE.	NATIONAL INSTITUTE OF FOOD AND AGRICULTURE.
3403.15	CSREES	NIFA.

■ 46a. Amend § 3403.2 by:

■ a. Removing the definition of *CSREES;* and

■ b. Adding a definition of *NIFA* in alphabetical order to read as follows:

§ 3403.2 Definitions.

* * * * *

NIFA means the National Institute of Food and Agriculture.

* * * * *

PART 3404—PUBLIC INFORMATION

■ 47. The authority citation for part 3404 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

§§ 3404.1, 3404.2, 3404.3, 3404.4, 3404.6 [Amended]

■ 48. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3404.1	Cooperative State Research, Education, and Extension Service (CSREES).	National Institute of Food and Agriculture (NIFA).
3404.2	CSREES	NIFA.
3404.3	CSREES	NIFA.
3404.3	e-mail *vherberger@ars.usda.gov* or shutchison@ars.usda.gov.	or E-mail *shutchison@ars.usda.gov.*
3404.4(a)	CSREES	NIFA.
3404.4(b)	CSREES	NIFA.
3404.4(d)	CSREES	NIFA.
3404.6	Administrator, CSREES	Director, NIFA.

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

■ 49. The authority citation for part 3405 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

§§ 3405.1, 3405.2, 3405.4, 3405.5, 3405.11, 3405.12, 3405.16, 3405.17, 3405.22 [Amended]

■ 50. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3405.1(a)	Administrator of the Cooperative State Research, Education, and Extension Service (CSREES).	Director of the National Institute of Food and Agriculture (NIFA).
3405.1(b)	CSREES	NIFA.
3405.1(c)(1)	CSREES	NIFA.
3405.1(c)(2)	Form CSREES–711	Form NIFA–711.
3405.1(d)(1)	CSREES	NIFA.
3405.1(d)(2)	CSREES	NIFA.
3405.2(j)	CSREES	NIFA.
3405.4	CSREES	NIFA.
3405.5	CSREES	NIFA.
3405.11(a)(1)	Form CSREES–712	Form NIFA–712.
3405.11(a)(1)	CSREES	NIFA.
3405.11(a)(2)	Form CSREES–712	Form NIFA–712.
3405.11(a)(4)	Form CSREES–712	Form NIFA–712.
3405.11(a)(5)	Form CSREES–712	Form NIFA–712.
3405.11(a)(6)	Form CSREES–712	Form NIFA–712.
3405.11(a)(7)	Form CSREES–712	Form NIFA–712.
3405.11(d)(1)	Form CSREES–712	Form NIFA–712.
3405.11(f)	Form CSREES–708	Form NIFA–708.
3405.11(g)(1)(i)	Form CSREES–713	Form NIFA–713.

Section	Remove	Add
3405.11(g)(2)(i)	Form CSREES–713	Form NIFA–713.
3405.11(g)(2)(ii)	Form CSREES–713	Form NIFA–713.
3405.11(g)(2)(iv)	Form CSREES–713	Form NIFA–713.
3405.11(g)(3)	Form CSREES–713	Form NIFA–713.
3405.11(h)	Form CSREES–663	Form NIFA–663.
3405.11(i)	Form CSREES–712	Form NIFA–712.
3405.12	CSREES	NIFA.
3405.12	Form CSREES–711	Form NIFA–711.
3405.16	CSREES	NIFA.
3405.17(d)	CSREES	NIFA.
3405.22	CSREES	NIFA.

PART 3406—1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

■ 51. The authority citation for part 3406 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

§§ 3406.1, 3406.4, 3406.5, 3406.6, 3406.13, 3406.18, 3406.21, 3406.23, 3406.24, 3406.29 [Amended]

■ 52. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3406.1(a)	Administrator of the Cooperative State Research, Education, and Extension Service (CSREES).	Director of the National Institute of Food and Agriculture (NIFA).
3406.1(b)	CSREES	NIFA.
3406.1(c)(1)	CSREES	NIFA.
3406.1(c)(2)	Form CSREES–711	Form NIFA–711.
3406.1(d)(1)	CSREES	NIFA.
3406.1(d)(2)	CSREES	NIFA.
3406.4(d)	CSREES	NIFA.
3406.5	CSREES	NIFA.
3406.6(b)	CSREES	NIFA.
3406.13(a)(1)	Form CSREES–712	Form NIFA–712.
3406.13(a)(1)	CSREES	NIFA.
3406.13(a)(2)	Form CSREES–712	Form NIFA–712.
3406.13(a)(4)	Form CSREES–712	Form NIFA–712.
3406.13(a)(5)	Form CSREES–712	Form NIFA–712.
3406.13(a)(6)	Form CSREES–712	Form NIFA–712.
3406.13(a)(7)	Form CSREES–712	Form NIFA–712.
3406.13(e)(1)(i)	Form CSREES–712	Form NIFA–712.
3406.13(g)	Form CSREES–708	Form NIFA–708.
3406.13(h)(1)(i)	Form CSREES–713	Form NIFA–713.
3406.13(h)(2)(i)	Form CSREES–713	Form NIFA–713.
3406.13(h)(2)(ii)	Form CSREES–713	Form NIFA–713.
3406.13(h)(2)(iv)	Form CSREES–713	Form NIFA–713.
3406.13(h)(3)(i)(C)	Form CSREES–713	Form NIFA–713.
3406.13(i)	Form CSREES–663	Form NIFA–663.
3406.13(j)	Form CSREES–712	Form NIFA–712.
3406.18(a)(1)	Form CSREES–712	Form NIFA–712.
3406.18(a)(1)	CSREES	NIFA.
3406.18(a)(2)	Form CSREES–712	Form NIFA–712.
3406.18(a)(4)	Form CSREES–712	Form NIFA–712.
3406.18(a)(5)	Form CSREES–712	Form NIFA–712.
3406.18(a)(6)	Form CSREES–712	Form NIFA–712.
3406.18(a)(7)	Form CSREES–712	Form NIFA–712.
3406.18(e)(1)(i)	Form CSREES–712	Form NIFA–712.
3406.18(g)	Form CSREES–710	Form NIFA–710.
3406.18(h)(1)(i)	Form CSREES–713	Form NIFA–713.
3406.18(h)(2)(i)	Form CSREES–713	Form NIFA–713.
3406.18(h)(2)(ii)	Form CSREES–713	Form NIFA–713.
3406.18(h)(2)(iv)	Form CSREES–713	Form NIFA–713.
3406.18(h)(3)(i)(C)	Form CSREES–713	Form NIFA–713.
3406.18(i)	Form CSREES–663	Form NIFA–663.
3406.18(j)	Form CSREES–712	Form NIFA–712.
3406.18(k)	Form CSREES–662	Form NIFA–662.
3406.18(k)(1)	Form CSREES–712	Form NIFA–712.
3406.18(k)(1)	Form CSREES–662	Form NIFA–662.
3406.18(k)(1)	CSREES	NIFA.
3406.18(k)(2)	CSREES	NIFA.
3406.18(k)(2)	Form CSREES–712	Form NIFA–712.

Section	Remove	Add
3406.18(k)(2)	Form CSREES–662	Form NIFA–662.
3406.18(k)(3)	CSREES	NIFA.
3406.18(k)(3)	Form CSREES–712	Form NIFA–712.
3406.18(k)(3)	Form CSREES–662	Form NIFA–662.
3406.18(l)	Cooperative State Research, Education, and Extension Service.	National Institute of Food and Agriculture.
3406.18(l)	CSREES	NIFA.
3406.18(l)(1)	CSREES	NIFA.
3406.18(l)(1)	Form CSREES–1234	Form NIFA–1234.
3406.18(l)(2)	CSREES	NIFA.
3406.21	CSREES	NIFA.
3406.21	Form CSREES–711	Form NIFA–711.
3406.23	CSREES	NIFA.
3406.24(d)	CSREES	NIFA.
3406.29	CSREES	NIFA.

■ 52a. Amend § 3406.2 by revising the definition of *Eligible participant* to read as follows:

§ 3406.2 Definitions.

* * * * *

Eligible participant means, for purposes of § 3406.11(b), Faculty Preparation and Enhancement for Teaching, and § 3406.11(f), Student Recruitment and Retention, an individual who:

(1) Is a citizen or national of the United States, as defined in this section; or

(2) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under paragraph (2) of the definition of "citizen or national of the United States" as specified in this section, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to NIFA upon request.

* * * * *

PART 3407—IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

■ 53. The authority citation for part 3407 continues to read as follows:

Authority: National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.;* E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR parts 1500–1508; and 7 CFR part 1b.

§§ 3407.2, 3407.3, 3407.4, 3407.5, 3407.6, 3407.7, 3407.8, 3407.9, 3407.10, 3407.11 [Amended]

■ 54. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3407.2(a)	CSREES	NIFA.
3407.3(a)	CSREES	NIFA.
3407.3(d)	CSREES	NIFA.
3407.3(e)	CSREES	NIFA.
3407.3(f)	CSREES	NIFA.
3407.3(i)	CSREES	NIFA.
3407.3(k)	CSREES	NIFA.
3407.4	CSREES	NIFA.
3407.4(a)	*Administrator.*	*Director.*
3407.4(a)	Administrator	Director.
3407.4(b)	*Associate Administrators and Deputy Administrators*	*Deputy Directors and Assistant Directors.*
3407.4(b)	Associate Administrators and Deputy Administrators	Deputy Directors and Assistant Directors.
3407.4(b)(1)	CSREES	NIFA.
3407.4(c)	CSREES	NIFA.
3407.4(d)(1)	CSREES'	NIFA's.
3407.5	CSREES	NIFA.
3407.6(a)	CSREES	NIFA.
3407.6(a)(2)	*CSREES categorical exclusions.*	*NIFA categorical exclusions.*
3407.6(a)(2)	CSREES	NIFA.
3407.6(b)	CSREES	NIFA.
3407.7(a)	CSREES	NIFA.
3407.8	CSREES	NIFA.
3407.9	CSREES	NIFA.
3407.9(c)	CSREES	NIFA.
3407.10(a)	CSREES	NIFA.
3407.10(b)	CSREES	NIFA.
3407.10(c)	CSREES	NIFA.
3407.11(b)	CSREES	NIFA.
3407.11(d)	CSREES	NIFA.
3407.11(e)	CSREES	NIFA.

PART 3411—NATIONAL RESEARCH INITIATIVE COMPETITIVE GRANTS PROGRAM [RESERVED]

■ 55. Remove and reserve part 3411 as set forth above.

PART 3415—BIOTECHNOLOGY RISK ASSESSMENT RESEARCH GRANTS PROGRAM

■ 56. The authority citation for part 3415 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 5921.

§§ 3415.1, 3415.2, 3415.4, 3415.5, 3415.6, 3415.7, 3415.8, 3415.9, 3415.10, 3415.14 [Amended]

■ 57. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3415.1(a)	Administrators of CSREES and ARS	Director of NIFA and Administrator of ARS.
3415.2(c)	Administrator	Director or Administrator.
3415.2(h) [as redesignated below].	Administrator	Director or Administrator.
3415.2(k) [as redesignated below].	Administrator	Director or Administrator.
3415.2(m) [as redesignated below].	Administrator	Director or Administrator.
3415.4(c)(1)	*Form CSREES–661*	*Form NIFA–661.*
3415.4(c)(1)	Form CSREES–661	Form NIFA–661.
3415.4(c)(5)	Administrator	Director or Administrator.
3415.4(d)(1)	*Form CSREES–661*	*Form NIFA–661.*
3415.4(d)(1)	Form CSREES–661	Form NIFA–661.
3415.4(d)(9)	Form CSREES–55	Form NIFA–55.
3415.4(d)(10)(i)	Form CSREES–662	Form NIFA–662.
3415.4(d)(10)(ii)	Form CSREES–662	Form NIFA–662.
3415.4(d)(10)(iii)	Form CSREES–662	Form NIFA–662.
3415.4(d)(11)	Administrator	Director or Administrator.
3415.4(d)(11)	Form CSREES–663	Form NIFA–663.
3415.4(d)(12)	Administrator	Director or Administrator.
3415.5(a)	Administrator	Director or Administrator.
3415.5(a)	CSREES	NIFA.
3415.5(b)	Administrator's	Director's or Administrator's.
3415.5(b)	Administrator	Director or Administrator.
3415.6(a)	CSREES	NIFA.
3415.6(a)	Administrator	Director or Administrator.
3415.6(b)(1)(i)	Administrator	Director or Administrator.
3415.6(b)(1)(vi)	Administrator	Director or Administrator.
3415.6(b)(1)(ix)	CSREES	NIFA.
3415.6(c)(1)	CSREES	NIFA.
3415.6(c)(2)	CSREES	NIFA.
3415.6(c)(3)	CSREES	NIFA.
3415.6(d)	CSREES	NIFA.
3415.6(d)(1)	CSREES	NIFA.
3415.6(d)(2)	CSREES	NIFA.
3415.7(b)(1)	CSREES	NIFA.
3415.7(b)(2)	CSREES	NIFA.
3415.7(b)(3)	CSREES	NIFA.
3415.7(b)(4)	CSREES	NIFA.
3415.7(c)	CSREES	NIFA.
3415.7(d)	CSREES	NIFA.
3415.8	CSREES	NIFA.
3415.9	Administrator	Director or Administrator.
3415.9	Administrator's	Director's or Administrator's.
3415.10	Administrator	Director or Administrator.
3415.14(b)	Administrator	Director or Administrator.
3415.14(d)	CSREES	NIFA.

■ 57a. Amend § 3415.2 by:
■ a. Revising paragraph (b);
■ b. Redesignating paragraphs (g) through (n) as paragraphs (h) through (o); and
■ c. Adding a new paragraph (g) to read as follows:

§ 3415.2 Definitions.

* * * * *

(b) *Administrator* means the Administrator of the Agricultural Research Service (ARS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

* * * * *

(g) *Director* means the Director of the National Institute of Food and Agriculture (NIFA) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

* * * * *

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

■ 58. The authority citation for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

§§ 3430.1, 3430.3, 3430.4, 3430.11, 3430.12, 3430.13, 3430.14, 3430.15, 3430.16, 3430.17, 3430.18, 3430.19, 3430.20, 3430.31, 3430.32, 3430.33, 3430.34, 3430.35, 3430.36, 3430.41, 3430.42, 3430.51, 3430.52, 3430.53, 3430.55, 3430.56, 3430.57, 3430.58, 3430.59, 3430.60, 3430.61, 3430.62, 3430.63, 3430.201, 3430.204, 3430.604, 3430.607, 3430.608, 3430.609 [Amended]

■ 59. In the table below, for each section indicated in the left column, remove the term or phrase indicated in the middle column from wherever it appears in the section, and add the term or phrase indicated in the right column:

Section	Remove	Add
3430.1(a)	Cooperative State Research, Education, and Extension Service (CSREES).	National Institute of Food and Agriculture (NIFA).
3430.1(b)	CSREES	NIFA.
3430.1(b)	Administrator	Director.
3430.1(c)	CSREES	NIFA.
3430.1(c)	Administrator	Director.
3430.1(f)	CSREES	NIFA.
3430.3	CSREES	NIFA.
3430.4	CSREES	NIFA.
3430.11(a)	CSREES	NIFA.
3430.11(b)	CSREES	NIFA.
3430.12(a)	CSREES	NIFA.
3430.12(c)	CSREES	NIFA.
3430.13(a)	CSREES	NIFA.
3430.13(b)	CSREES	NIFA.
3430.14(a)	CSREES	NIFA.
3430.14(a)(2)	CSREES	NIFA.
3430.14(a)(3)	CSREES	NIFA.
3430.14(a)(6)	CSREES	NIFA.
3430.14(b)	CSREES	NIFA.
3430.14(b)(1)	CSREES	NIFA.
3430.14(b)(2)	CSREES	NIFA.
3430.14(b)(3)	CSREES	NIFA.
3430.14(b)(4)	CSREES	NIFA.
3430.15	CSREES	NIFA.
3430.16(b)(1)	CSREES	NIFA.
3430.16(b)(2)	CSREES	NIFA.
3430.16(c)	CSREES	NIFA.
3430.17	CSREES	NIFA.
3430.18(a)	CSREES	NIFA.
3430.18(c)	CSREES	NIFA.
3430.19(a)(1)(i)	CSREES-assigned	NIFA-assigned.
3430.19(b)(1)	CSREES	NIFA.
3430.19(b)(2)	CSREES	NIFA.
3430.20	CSREES	NIFA.
3430.31	CSREES	NIFA.
3430.32	CSREES	NIFA.
3430.33(a)	CSREES	NIFA.
3430.33(b)	*CSREES Peer Review System*	*NIFA Peer Review System.*
3430.33(b)	CSREES	NIFA.
3430.33(d)	CSREES	NIFA.
3430.33(e)	CSREES	NIFA.
3430.34(a)	CSREES	NIFA.
3430.35(b)	CSREES	NIFA.
3430.36	CSREES	NIFA.
3430.36	Administrator	Director.
3430.41(a)	CSREES	NIFA.
3430.41(b)	Form CSREES–2009	Form NIFA–2009.
3430.41(b)(1)	Administrator	Director.
3430.41(b)(4)	CSREES	NIFA.
3430.41(b)(6)	CSREES	NIFA.
3430.41(b)(10)	CSREES	NIFA.
3430.42(a)	CSREES	NIFA.
3430.42(b)	CSREES	NIFA.
3430.42(c)	*Form CSREES–2009, Award Face Sheet*	*Form NIFA–2009, Award Face Sheet.*
3430.42(c)	Form CSREES–2009	Form NIFA–2009.
3430.42(d)	CSREES	NIFA.
3430.51(b)	CSREES	NIFA.
3430.52(a)	CSREES	NIFA.
3430.53(a)	CSREES	NIFA.
3430.53(b)	CSREES	NIFA.
3430.55(c)	Form CSREES–2009	Form NIFA–2009.

Section	Remove	Add
3430.55(e)	http://cris.csrees.usda.gov	http://cris.nifa.usda.gov.
3430.55(f)	Form CSREES–2009	Form NIFA–2009.
3430.56(a)	CSREES	NIFA.
3430.56(b)	Form CSREES–2009	Form NIFA–2009.
3430.56(d)	CSREES	NIFA.
3430.56(f)	CSREES	NIFA.
3430.56(f)	Form CSREES–2009	Form NIFA–2009.
3430.57	CSREES	NIFA.
3430.58(b)(1)	CSREES	NIFA.
3430.58(b)(3)	CSREES	NIFA.
3430.59(a)	CSREES	NIFA.
3430.59(b)	CSREES	NIFA.
3430.59(c)	CSREES	NIFA.
3430.59(d)	CSREES	NIFA.
3430.59(e)	CSREES	NIFA.
3430.59(e)	Deputy Administrator	Assistant Director.
3430.60(a)	CSREES	NIFA.
3430.60(b)	CSREES	NIFA.
3430.60(c)	CSREES	NIFA.
3430.61	CSREES	NIFA.
3430.62(a)	CSREES	NIFA.
3430.62(b)	CSREES	NIFA.
3430.62(c)	CSREES	NIFA.
3430.62(c)	Deputy Administrator	Assistant Director.
3430.63(a)	*CSREES awards supported with agency appropriations*	*NIFA awards supported with agency appropriations.*
3430.63(a)	CSREES	NIFA.
3430.63(b)	*CSREES awards supported with funds from other Federal agencies (reimbursable funds).*	*NIFA awards supported with funds from other Federal agencies (reimbursable funds).*
3430.63(b)	CSREES	NIFA.
3430.201(b)	CSREES	NIFA.
3430.204	CSREES	NIFA.
3430.604(a)	CSREES	NIFA.
3430.607	CSREES	NIFA.
3430.608(a)	CSREES	NIFA.
3430.608(b)	CSREES	NIFA.
3430.608(c)	CSREES	NIFA.
3430.609(a)	CSREES	NIFA.
3430.904	CSREES	NIFA.
3430.907	CSREES	NIFA.
3430.908	CSREES	NIFA.

■ 59a. Amend § 3430.2 by:
■ a. Revising the definitions of *Cooperative agreement, Non-citizen national of the United States, Program announcement,* and *Program Officer;*
■ b. Removing the definition of *Administrator;* and
■ c. Adding a definition of *Director* in alphabetical order to read as follows:

§ 3430.2 Definitions.

* * * * *

Cooperative agreement means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between NIFA and the awardee when carrying out the activity contemplated in the agreement.

* * * * *

Director means the Director of NIFA and any other officer or employee of NIFA to whom the authority involved is delegated.

* * * * *

Non-citizen national of the United States means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between NIFA and the awardee when carrying out the activity contemplated in the agreement.

* * * * *

Program announcement (PA) means a detailed description of the RFA without the associated application package(s). NIFA will not solicit or accept applications in response to a PA.

* * * * *

Program Officer means a NIFA individual (often referred to as a National Program Leader) who is responsible for the technical oversight of the award on behalf of the Department.

* * * * *

Done in Washington, DC, on January 3, 2011.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2011–1701 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–22–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD37

Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts; Inclusion of Interest on Lawyers Trust Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending its deposit insurance regulations to implement an amendment to section 11(a)(1)(B)(iii) of the Federal Deposit Insurance Act (FDI Act), as added by section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203), that includes Interest on Lawyers Trust Accounts ("IOLTAs") in the definition of "noninterest-bearing transaction account" for purposes of providing unlimited deposit insurance for such accounts for two years starting December 31, 2010.

DATES: *Effective Date:* The final rule is effective January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Supervisory Counsel, Legal Division (202) 898–7349 or *jdinuzzo@fdic.gov;* William Piervincenzi, Attorney, Legal Division (202) 898–6957 or *wpiervincenzi@fdic.gov;* or James V. Deveney, Chief, Deposit Insurance Section, Division of Supervision and Consumer Protection (202) 898–6687 or *jdeveney@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 2010, the FDIC published a final rule ("November final rule") [1] to implement section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 343").[2] Section 343 amended the deposit insurance provisions of the FDI Act (12 U.S.C. 1821(a)(1)) to provide temporary separate insurance coverage for noninterest-bearing transaction accounts. The November final rule followed the definition of *noninterest-bearing transaction account* in Section 343. Section 343 defined a noninterest-bearing transaction account as "a deposit or account maintained at an insured depository institution with respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal."

In the November final rule, the FDIC noted that, unlike the definition *of noninterest-bearing transaction account* in the FDIC's Transaction Account Guarantee Program ("TAGP"), the Section 343 definition did not include NOW accounts (regardless of the interest rate paid on the account) or IOLTAs. Therefore, neither NOW accounts nor IOLTAs were within the November final rule's definition of *noninterest-bearing transaction account.*

The November final rule included disclosure and notice requirements as part of the implementation of Section 343. These included, among other requirements, the requirements that: (1) Insured depository institutions ("IDIs") post a prescribed notice in their main office, at each branch and, if applicable, on their Web site that indicated that noninterest-bearing transactions accounts do not include NOW accounts or IOLTAs; and (2) IDIs then participating in the TAGP notify NOW account and IOLTA depositors that, beginning January 1, 2011, those accounts no longer will be eligible for unlimited protection but would be insured under the general deposit insurance rules.

On December 29, 2010, the President signed an act (the "Act") that amended the definition of *noninterest-bearing transaction account* in Section 11(a)(1)(B)(iii) of the FDI Act. The Act replaced the Section 343 definition with one that explicitly includes IOLTAs. Section 11(a)(1)(B)(iii), as amended, defines the *term noninterest-bearing transaction account* as "a deposit or account maintained at an insured depository institution with respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and a trust account established by an attorney or law firm on behalf of a client, commonly known as an *Interest on Lawyers Trust Account,* or a functionally equivalent account, as determined by the Corporation."

II. The Final Rule

This final rule is in the form of a technical amendment that generally leaves intact the notice requirements of the November final rule, but amends the prescribed notice required by 12 CFR 330.16(c)(1). IDIs must post the revised notice no later than February 28, 2011. Also, this final rule eliminates the requirement that IDIs participating in the TAGP as of December 31, 2010 notify IOLTA depositors that, beginning January 1, 2011, IOLTAs will no longer will be eligible for unlimited protection.

As indicated in informal guidance the FDIC has provided to the industry,[3] IDIs that already have sent the notice required in the November final rule to IOLTA depositors are encouraged, but not required, to send a revised notice to such IOLTA depositors that their funds will be fully insured from December 31, 2010 through December 31, 2012.

III. Administrative Procedure Act

The FDIC invokes the *good cause* exception to the requirement in the Administrative Procedure Act ("APA") [4] that, before a rulemaking can be finalized, it must first be issued for public comment. The FDIC believes that good cause exists for issuing a final rule without providing an opportunity for comment because seeking public comment is "unnecessary," "impracticable," and "contrary to the public interest" under these circumstances.[5]

The Act, signed into law on December 29, 2010, revises Section 11(a)(1)(B) of the Federal Deposit Insurance Act [6] to include IOLTAs within the definition of *noninterest-bearing transaction account* for purposes of providing IOLTAs with temporary unlimited deposit insurance coverage. This amendment is effective December 31, 2010, to coincide with the amendment to the FDI Act providing temporary unlimited deposit insurance coverage to noninterest-bearing transaction accounts generally, as required by Section 343. This final rule amends the FDIC's deposit insurance regulations to reflect this change made by Congress; none of the other regulations affecting the calculation of deposit insurance are changed by the final rule. Additionally, the final rule revises the prescribed notice to reflect that IOLTAs are not excluded from the separate deposit insurance coverage for noninterest-bearing accounts enacted by Congress; this change in the prescribed notice is meant to allow institutions to post the updated prescribed notice immediately so that depositors will be aware of this change in deposit insurance coverage. Finally, the final rule eliminates the requirement that IDIs participating in the TAGP notify IOLTA holders that, as of January 1, 2011, such

[1] 75 FR 69577 (Nov. 15, 2010).

[2] Public Law 111–203 (July 21, 2010).

[3] *See* FIL–2–2011 (Jan. 21, 2011); *See also: http://www.fdic.gov/deposit/deposits/changes2.html.*

[4] 5 U.S.C. 553.

[5] 5 U.S.C. 553(b)(3)(B).

[6] 12 U.S.C. 1821(a)(1)(B).

accounts no longer will be eligible for unlimited protection.

Because the final rule involves mere technical amendments that conform the FDIC's definition of *noninterest-bearing transaction account* to the language of the revised statute, revise the prescribed notice to indicate this change in deposit insurance coverage, and reduce the number of required notifications, the FDIC finds that notice and comment procedures are "unnecessary," and the good cause exception to the APA's notice-and-comment requirement applies. *See, e.g., Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1290–92 (DC Cir. 1991) (regulations that "either restate or paraphrase the detailed requirements" of a self-executing statute do not require notice and comment); *Nat'l Customs Brokers & Forwarders Ass'n* v. *United States,* 59 F.3d 1219, 1223–24 (Fed. Cir. 1995) (notice and comment unnecessary where Congress directed agency to change regulations and public would benefit from amendments).

Additionally, staff believes that a finding of good cause is warranted because it would be "impracticable" and "contrary to the public interest" to delay revising the disclosure requirements to seek public comment on the revision. Because the amendment to the definition of *noninterest-bearing transaction account* was effective two days after enactment of the December 29 Act, it is in the public interest for the Corporation to take immediate steps to make depositors aware of this change in deposit insurance coverage. A delay in distribution of required notices and prescribed lobby disclosures would be detrimental to this goal, and therefore, complying with formal notice and comment procedures would be "impracticable" and "contrary to the public interest."

Finally, a finding of good cause for waiving the requirement of a 30-day delayed effective date is warranted because of the need for immediate guidance to depositors, which implementation and posting of the prescribed notice would provide. A delayed effective date is unnecessary because the only provision of the final rule requiring institutions to take certain actions—*i.e.,* the change in the prescribed notice—would not be enforced until February 28, 2011.

IV. Regulatory Analysis and Procedure

A. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. Section 4802(b)) requires, subject to certain exceptions, that regulations imposing additional reporting, disclosure or other requirements take effect on the first day of the calendar quarter after publication of the final rule. One of the statutory exceptions to this requirement is when the regulation is required to take effect on a date other than on the first day of the calendar quarter after publication of the final rule. The effective date of Section 343 is December 31, 2010, and the effective date of the additional amendments to Section 11(a)(i)(B) of the FDI Act is December 31, 2010. Thus, the effective date of the final rule is the **Federal Register** publication date.

B. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number. This final rule modifies existing disclosure requirements in sections 330.16(c)(1) and (c)(2). Specifically, section 330.16(c)(1) revises the language of the "Notice of Changes In Temporary FDIC Insurance Coverage For Transaction Accounts" to be posted by insured depository institutions offering noninterest-bearing transaction accounts in the lobbies of their main office and domestic branches and, if they offer Internet deposit services, on their Web sites. Disclosure requirements are typically subject to PRA. However, because the FDIC has provided the specific text for the notice and allows for no variance in the language, the disclosure is excluded from coverage under PRA because "the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included" within the definition of "collection of information." 5 CFR 1320.3(c)(2). Therefore, the FDIC is not submitting the revised section 330.16(c)(1) disclosure to OMB for review.

This final rule also modifies the existing section 330.16(c)(2). Currently, section 330.16(c)(2) requires IDIs participating in the TAGP to provide individual notices to depositors alerting them to the fact that IOLTAs and low-interest NOWs are not eligible for unlimited coverage under the new temporary insurance category for noninterest-bearing transaction accounts. Although this final rule will eliminate the requirement for institutions to provide the disclosure to depositors with IOLTAs, any change to current burden estimates is assumed by the FDIC to be negligible because the rule retains the disclosure requirements for low-interest NOW accounts. Since there is no change to the current estimated burden for section 330.16(c)(2), the FDIC is not submitting the revised section 330.16(c)(2) disclosure to OMB for review.

C. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this final rulemaking or certify that the final rule does not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be "small entities." The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2010, there were 4,294 IDIs that were considered small entities. As of December 31, 2010, 3,173 of these small IDIs participated in the TAGP. Within this group of small institutions, 618, or 19.5 percent, did not have TAGP eligible deposits as of the June 2010 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, "June 2010 Call Reports"); thus, they were not required to pay the fee assessed for participation in the TAGP. As to the remaining 2,555 small entities that had TAGP eligible deposits as of the June 2010 Call Reports, they will no longer be assessed a fee after the termination of the TAGP, and they will not be charged a separate assessment for the new deposit insurance coverage.

The FDIC has determined that under the final rule, the economic impact on small entities will not be significant for the following reasons. Because there is no separate FDIC assessment for the insurance of noninterest-bearing transaction accounts under section 343 of the Dodd-Frank Act, small entities assessed fees for participation in the TAGP will realize an average annual cost savings of $2,373 per institution. All other small entities, whether they participated in the TAGP or not, will gain additional insurance coverage with no separate direct cost. The FDIC asserts that the economic benefit of additional insurance coverage and coverage extension until 2013 outweighs any future costs associated with the temporary insurance of noninterest-bearing transaction accounts.

With respect to amending the disclosures related to Section 343, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they currently pay a fee) is de minimis in nature and is outweighed by the economic benefit of additional insurance coverage.

Accordingly, the final rule does not have a significant economic impact on a substantial number of small entities.

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

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 ("SBREFA") (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner, and has previously made revisions to the proposed rule in response to commenter concerns seeking clarification of the application of the deposit insurance rules.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. In § 330.1, paragraph (r) is revised to read as follows:

§ 330.1. Definitions.

* * * * *

(r) *Noninterest-bearing transaction account* means—

(1) A deposit or account maintained at an insured depository institution—

(i) With respect to which interest is neither accrued nor paid;

(ii) On which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(iii) On which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and

(2) A trust account established by an attorney or law firm on behalf of a client, commonly known as an *Interest on Lawyers Trust Account,* or a functionally equivalent account, as determined by the Corporation.

■ 3. In § 330.16, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 330.16 Noninterest-bearing transaction accounts.

* * * * *

(c) * * *

(1) By no later than February 28, 2011, each depository institution that offers noninterest-bearing transaction accounts must post prominently the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It also includes Interest on Lawyers Trust Accounts ("IOLTAs"). It does not include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, and money-market deposit accounts.

For more information about temporary FDIC insurance coverage of transaction accounts, visit *www.fdic.gov*.

(2) Institutions participating in the FDIC's Transaction Account Guarantee Program on December 31, 2010, must provide a notice by mail to depositors with negotiable order of withdrawal accounts that are protected in full as of that date under the Transaction Account Guarantee Program that, as of January 1, 2011, such accounts no longer will be eligible for unlimited protection. This notice must be provided to such depositors no later than December 31, 2010.

* * * * *

Dated at Washington, DC, this 18th day of January 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–1732 Filed 1–26–11; 8:45 am]

BILLING CODE 6741–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC27

Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Department of the Treasury gives notice of an amendment to update its Privacy Act regulations, and to add an exemption from certain provisions of the Privacy Act for a system of records related to the Office of Foreign Assets Control (OFAC).

DATES: *Effective Date:* January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2510 (not a toll free number), or Chief Counsel (Foreign Assets Control), Office of General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2410 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Departmental Offices published a system of records notice on October 6, 2010, at 75 FR 61853, consolidating three systems of records into one entitled "Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions."

On October 13, 2010, the Department published, at 75 FR 62737, a proposed rule amending § 1.26(g)(6)(ii)(A) to update the reference to applicable Executive Orders by referencing Executive Orders 12958, 13526, or successor or prior Executive Orders as may be necessary. The proposed rule also exempted the system of records from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1).

The proposed rule created a new table in paragraph 31 CFR 1.36(e)(1) under the heading designated as "(i) Departmental Offices:". The system of records entitled "DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" will be added to the table under (i). The current heading "Financial Crimes Enforcement Network:" and the associated table are designated as "(ii)."

The proposed rule requested that public comments be submitted to the Assistant Director, Disclosure Services, OFAC, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department did not receive comments on the proposed rule. Accordingly the Department is hereby giving notice that the system of records entitled "Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" is exempt from provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1) as set forth in the proposed rule.

This final rule is not a "significant regulatory action" under Executive Order 12866.

A notice amending the Privacy Act system of records entitled "Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" will be published separately in the **Federal Register**.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," as defined in the RFA.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of Title 31 of the Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a, as amended.

Subpart C—Privacy Act

■ 2. Section 1.26 is amended by revising the first sentence in paragraph (g)(6)(ii)(A) to read as follows:

§ 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(A) Requests for information classified pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders require the responsible component of the Department to review the information to determine whether it continues to warrant classification pursuant to an Executive Order. * * * * * * * * *

■ 3. Section 1.36 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Departmental Offices:

Number	System name
DO .120 ..	Records Related to Office of Foreign Assets Control Economic Sanctions.

(ii) Financial Crimes Enforcement Network:

Number	System name
FinCEN .001.	FinCEN Database.

(2) The Department of the Treasury hereby exempts the systems of records listed in paragraph (e)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders.

* * * * *

Dated: January 7, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2011–1775 Filed 1–26–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0009]

Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the P.J. McArdle Bridge across the Chelsea River, mile 0.3, between Chelsea and East Boston, Massachusetts. The deviation is necessary to facilitate a public event. This deviation allows the bridge to remain in the closed position.

DATES: This deviation is effective from 8 a.m. through 5 p.m. on May 21, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0009 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0009 in the "Keyword" 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 rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The P.J. McArdle Bridge, across the Chelsea River at mile 0.3, between Chelsea and East Boston, Massachusetts, has a vertical clearance in the closed position of 21 feet at mean high water and 30 feet at mean low water. The bridge opens on signal at all times as required by 33 CFR 117.593.

The Chelsea Green Space and Recreation Committee, requested a temporary deviation to facilitate a public event, the Chelsea River Revel and 5K Road Race.

The waterway is predominantly a commercial waterway with one upstream marina.

This deviation allows the bridge to remain closed from 8 a.m. to 5 p.m. on May 21, 2011. Vessels able to pass under the closed draw may do so at any time.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 11, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–1805 Filed 1–26–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0013]

Drawbridge Operation Regulation; Old Brazos River, Freeport, Brazoria County, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Old Brazos River, mile 4.4, at Freeport, Brazoria County, Texas. This deviation allows the bridge to remain closed to navigation for six 13-hour periods between January 21 and January 30, 2011 and one 5-day period between February 10 and 16, 2011.

DATES: This deviation is effective from 7 a.m. on January 21, 2011 through 7 a.m. on February 10, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0013 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0013 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 rule, call or e-mail Phil Johnson, Bridge Management Specialist, Eighth Coast Guard District, Bridge Administration Branch, telephone 504–671–2128, e-mail: *Philip.R.Johnson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company has requested a temporary deviation from the published regulation for the Union Pacific Railroad Bridge across the Old Brazos River in 33 CFR 117.975: The draw of the Union Pacific railroad bridge, mile 4.4 at Freeport, shall be maintained in the fully open position, except for the crossing of trains or for maintenance.

The Union Pacific Railroad Company requests a deviation to allow the bridge to remain closed to marine traffic as follows: January 21, 22 and 23, 2011 from 7 a.m. to 8 p.m. January 28, 29 and 30, 2011 from 7 a.m. to 8 p.m. and from 5 p.m. on February 10, 2011 until 7 a.m. on February 16, 2011.

This deviation will allow the swing span of the bridge to remain in the closed-to-navigation position in order for the north end of the swing span to be cut off and for the span to be rebalanced. This work is necessary due to an ongoing bridge modification project, authorized by Coast Guard Bridge Permit Amendment P(7a–09–8) dated September 14, 2010. The project involves the eventual replacement of the swing span with a vertical lift span. Foundations for the lift towers are currently being constructed on both sides of the navigation channel. The length of the swing span must be reduced on the north side so that the lift tower may be set onto the foundation. The process of cutting the steel truss members off of the swing span, while keeping the span balanced on the pivot pier, requires that the swing span be maintained in the closed-to-navigation position for the times specified above.

Vessel traffic at the bridge site consists of commercial fishing vessels, commercial dive boats and recreational boats. There are no alternate routes. During the closure times, the balancing process for the swing span will prevent it from being able to open for emergencies. Per 33 CFR 117.975: The normal operating schedule requires that the draw of the Union Pacific railroad bridge, mile 4.4 at Freeport, shall be maintained in the fully open position, except for the crossing of trains or for maintenance.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time periods. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 11, 2011.

David M. Frank,

Bridge Administrator,

By direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2011–1806 Filed 1–26–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1132]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Upper Hack Bridge across the Hackensack River, mile 6.9, at Secaucus, New Jersey. The deviation is necessary for electrical rehabilitation. This deviation allows the bridge to remain in the closed position.

DATES: This deviation is effective from 4 a.m. on January 27, 2011 through 10 p.m. on January 28, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1132 and are available online at *http://www.regulations.gov,* inserting USCG–2010–1132 in the "Keyword" 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 rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil,* telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Upper Hack Bridge, across the Hackensack River at mile 6.9 has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(d).

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New Jersey Transit, requested a temporary deviation to facilitate necessary electrical system upgrades at the bridge.

Under this temporary deviation the Upper Hack Bridge, mile 6.9, across the Hackensack River may remain in the closed position from 4 a.m. on January 27, 2011 through 10 p.m. on January 28, 2011. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 11, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–1818 Filed 1–26–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1121]

Drawbridge Operation Regulations; Passaic River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 1 & 9 Bridge across the Passaic River, mile 1.8, at Jersey City, New Jersey. The deviation is necessary for bridge painting. This deviation allows the bridge owner to require a two-hour advance notice for bridge openings and several short duration bridge closures.

DATES: This deviation is effective from April 1, 2011 through July 31, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1121 and are available online at *http://www.regulations.gov,* inserting USCG–2010–1121 in the "Keyword" 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 rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil* or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Route 1 & 9 Bridge has a vertical clearance of 40 feet at mean high water, and 45 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.739(b).

The waterway is predominantly used by commercial operators.

The bridge owner, New Jersey Department of Transportation, requested a temporary deviation to facilitate bridge painting operations.

A two-hour advance notice is necessary in order to clear personnel and equipment from the bridge to safely provide bridge openings.

In addition, the painting operation work will necessitate several bridge closures of short duration to erect and relocate containment. The exact times for these closures are not known at this time because it is predicated upon the speed of the painting process. As a result, the Coast Guard will publish a notice in the Local Notice to Mariners two-weeks in advance of each closure as well as issue a safety information broadcast twenty-four hours prior to the commencement of each closure.

Under this temporary deviation a two-hour advance notice for bridge openings shall be required from April 1, 2011 through July 31, 2011, by calling the number posted at the bridge. Further, several bridge closures of short duration will be implemented. The exact bridge closure dates will be published in the Local Notice to Mariners two weeks in advance of each bridge closure and safety broadcasts will be issued twenty-four hours in advance. Vessels able to pass under the closed draw may do so at any time.

Waterway users were advised of the advance notice requirement and the requested bridge closures. No objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 11, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–1808 Filed 1–26–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2010–1122]

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Meadowbrook State Parkway Bridge across the Sloop Channel, mile 12.8, at Hempstead, New York. The deviation is necessary to

perform structural repairs. This deviation allows the bridge to remain in the closed position.

DATES: This deviation is effective from 7 a.m. on February 14, 2011 through 3 p.m. on February 25, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1122 and are available online at *http://www.regulations.gov,* inserting USCG–2010–1122 in the "Keyword" 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 rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Meadowbrook State Parkway Bridge has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(h).

The waterway has seasonal recreational vessels and fishing vessels of various sizes.

The New York Department of Transportation, requested a temporary deviation to facilitate installation of new link arms.

Under this temporary deviation the Meadowbrook State Parkway Bridge at mile 12.8, across Sloop Channel, may remain in the closed position between 7 a.m. and 3 p.m., Monday through Friday, from February 14, 2011 through February 25, 2011. Vessels that can pass under the bridge during the closed periods without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 11, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–1816 Filed 1–26–11; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to revise pricing and eligibility standards for commercial First-Class Mail® parcels associated with the January 2011 Postal Service filing with the Postal Regulatory Commission (PRC) for Mailing Services. We also will implement changes previously proposed to eliminate the sale of Standard Mail® stamped envelopes.

DATES: Effective April 17, 2011.

FOR FURTHER INFORMATION CONTACT: Marc McCrery at 202–268–2704 or Bill Chatfield at 202–268–7278.

SUPPLEMENTARY INFORMATION: On July 9, 2010, the Postal Service published a **Federal Register** proposed rule, *New Standards for Domestic Mailing Services* (75 FR 39477–39492), based on a previous price filing with the PRC that was not implemented. In that proposal, we included the elimination of Standard Mail (including nonprofit) stamped envelopes. We received no comments on that proposal or on the proposal to establish a separate commercial single-piece price for certain First-Class Mail parcels.

First-Class Mail Parcels

The Postal Service will establish a separate price category for commercial single-piece First-Class Mail parcels. Currently, mailers who presort a minimum of 500 First-Class Mail parcels pay single-piece prices for the residual portion of a presorted mailing after sorting to all required area distribution centers (ADCs). We also currently allow non-presort mailers access to those prices, with no volume minimum per mailing.

Commercial Base

Mailers will be able to pay commercial single-piece First-Class Mail prices for their parcels when they pay postage by any of the following three methods: Permit imprint, information-based indicia (IBI) meters, or PC Postage®. Parcels with IBI-metered postage or PC postage, claiming a presorted price or the new commercial single-piece parcel price, must be marked "CommercialBasePrice" in addition to the First-Class Mail marking. Presorted parcels also must be marked "Presorted." The "CommercialBasePrice" marking may be either within or directly below the indicia area. Except for parcels entered at the new commercial plus prices, First-Class Mail items cannot exceed 13 ounces.

Commercial Plus

The Postal Service also introduces a new price category under First-Class Mail, commercial plus pricing for First-Class Mail, designed for parcels over 13 ounces but less than 16 ounces. The commercial plus pricing option is established for First-Class Mail customers who pay postage with permit imprint, meet specific mailing requirements, and whose account volume exceeds a minimum threshold. All First-Class Mail parcels mailed at commercial plus prices must be marked "CommercialPlusPrice."

First-Class Mail commercial plus parcels must be machinable parcels that weigh more than 13 ounces but less than 16 ounces. Qualifying mailers also will have the option to pay commercial plus parcel prices for machinable parcels weighing less than 13 ounces. (with a minimum weight of 3.5 ounces the minimum for machinable parcels). A flat commercial plus price is charged at a single-piece price and each of the following presorted price levels: 5-digit, 3-digit, and ADC. Commercial plus parcels may be commingled with other First-Class Mail parcels, subject to adequate documentation. First-Class Mail commercial plus parcel prices will be available for customers who:

- Establish a customer commitment agreement with the Postal Service to mail more than 5,000 First-Class Mail machinable parcels at commercial plus prices in a calendar year.
- Pay for postage using a permit imprint.
- Enter a minimum of 500 pieces of mail for each presorted mailing or a minimum of 200 pieces or 50 pounds of mail for each single-piece mailing.
- Use the Electronic Verification System (eVS®) or submit an electronic postage statement with a computerized manifest.

Additionally, permit holders using Merchandise Return Service (MRS) for First-Class Mail machinable parcels will be eligible for commercial plus parcel prices if the total of their First-Class Mail MRS and outgoing volume meet the minimum volume commitment.

Discontinuation of Standard Mail Stamped Envelopes

Standard Mail (including nonprofit) stamped envelopes will no longer be available for purchase. Sales of Standard Mail envelopes have been declining

over the past 10 years. Therefore, the Postal Service eliminates Standard Mail stamped envelopes from our schedules and inventory lists. The eliminated product numbers are: 215100, 215200, 262700, 262800, and 216400.

Determining Single-Piece Weights for Package Services Flats

The Postal Service also revises the standards for determining single-piece weights for flats mailed at Bound Printed Matter, Media Mail, and Library Mail prices to match the change in January 2011 for Package Services parcels. All single-piece weights for these types of flats will be expressed in pounds calculated to two decimal places instead of the current four decimal places.

Standard Mail Nonmachinable Letters

We also make slight revisions to DMM 201 to coordinate changes implemented in January to refer to prices for Standard Mail nonmachinable letters over 3.3 ounces as nonmachinable letter prices rather than nonautomation flats prices.

The Postal Service hereby adopts the following changes to the *Mailing Services of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

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

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

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

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

101 Physical Standards

* * * * *

6.0 Additional Physical Standards for First-Class Mail

6.1 Maximum Weight and Size

[Revise the first two sentences of 6.1 as follows:]

First-Class Mail cannot exceed 13 ounces, except for First-Class Mail commercial plus parcels (see 433). First-Class Mail weighing more than 13 ounces that is not entered at commercial plus parcel prices is Priority Mail.

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130 First-Class Mail

133 Prices and Eligibility

1.0 Prices and Fees for First-Class Mail

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1.2 Price Computation for First-Class Mail

[Revise 1.2 as follows:]

Except for parcels, First-Class Mail prices are charged per ounce or fraction thereof; any fraction of an ounce is considered a whole ounce. For example, if a piece weighs 1.2 ounces, the weight (postage) increment is 2 ounces. The minimum postage per addressed letter or flat piece is that for a piece weighing 1 ounce. The minimum postage per addressed parcel is that for a 3-ounce parcel.

* * * * *

200 Commercial Letters and Cards

201 Physical Standards

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2.0 Physical Standards for Nonmachinable Letters

* * * * *

2.1 Criteria for Nonmachinable Letters

[Revise the last sentence of 2.1 to reposition the 3.5 ounce phrase as follows:]

* * * In addition, a letter-size piece is nonmachinable if it weighs more than 3.3 ounces, unless it has a barcode, weighs no more than 3.5 ounces, and is eligible for and claims automation letter prices or Standard Mail Carrier Route (barcoded) letter prices.

* * * * *

2.3 Additional Criteria for Standard Mail Nonmachinable Letters

[Revise the last sentence of 2.3 to agree with the current text of 243.3.2.1, to read as follows:]

* * * Mailers must prepare all nonmachinable letters as described in 245.5.0, and pay nonmachinable letter prices for pieces over 3.3 ounces.

* * * * *

300 Commercial Flats

301 Physical Standards

* * * * *

2.0 Physical Standards for Nonautomation Flats

2.1 First-Class Mail

These additional standards apply to First-Class Mail flat-size pieces:

[Revise 2.1a as follows:]

a. First-Class Mail flats cannot exceed 13 ounces. First-Class Mail flats weighing more than 13 ounces are Priority Mail.

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

1.0 Price and Fees for Bound Printed Matter

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1.2 Commercial Bound Printed Matter

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1.2.7 Determining Single-Piece Weight

[Revise the text of 1.2.7 as follows:]

To determine single-piece weight in a mailing of nonidentical-weight pieces, weigh each piece individually. To determine single-piece weight in a mailing of identical-weight pieces, weigh a sample of at least 10 randomly selected pieces and divide the total sample weight by the number of pieces. Express all single-piece weights in decimal pounds rounded off to two decimal places.

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370 Media Mail

373 Prices and Eligibility

1.0 Prices and Fees for Media Mail

* * * * *

1.6 Computing Postage for Media Mail

1.6.1 Determining Single-Piece Weight

[Revise the text of 1.6.1 as follows:]

To determine single-piece weight in a mailing of nonidentical-weight pieces, weigh each piece individually. To determine single-piece weight in a mailing of identical-weight pieces, weigh a sample of at least 10 randomly selected pieces and divide the total sample weight by the number of pieces. Express all single-piece weights in decimal pounds rounded off to two decimal places.

* * * * *

380 Library Mail

383 Prices and Eligibility

1.0 Prices and Fees for Library Mail

* * * * *

1.6 Computing Postage for Library Mail

1.6.1 Determining Single-Piece Weight

[Revise the text of 1.6.1 as follows:]

To determine single-piece weight in a mailing of nonidentical-weight pieces, weigh each piece individually. To determine single-piece weight in a mailing of identical-weight pieces, weigh a sample of at least 10 randomly selected pieces and divide the total sample weight by the number of pieces. Express all single-piece weights in decimal pounds rounded off to two decimal places.

* * * * *

400 Commercial Parcels

401 Physical Standards

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2.0 Additional Physical Standards by Class of Mail

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2.3 First-Class Mail Parcels

2.3.1 Weight

[Revise 2.3.1 as follows:]

First-Class Mail cannot exceed 13 ounces, except for First-Class Mail commercial plus parcels. First-Class Mail weighing more than 13 ounces that is not entered at commercial plus parcel prices is Priority Mail.

* * * * *

[Delete current 2.3.2, Surcharge, in its entirety and renumber current 2.3.3 as new 2.3.2.]

2.4 Standard Mail Parcels and Not-Flat Machinable Pieces

[Delete 2.4.3, Surcharge, in its entirety.]

* * * * *

402 Elements on the Face of a Mailpiece

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2.0 Placement and Content of Markings

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[Renumber current 2.4 through 2.8 as new 2.5 through 2.9 and add new 2.4 as follows:]

2.4 First-Class Mail Markings

2.4.1 Placement and Content

Markings must be placed as follows:

a. Basic Marking. The basic required marking "Presorted (or "PRSRT") First-Class Mail" must be printed or produced as part of; directly below; or to the left of the permit imprint or the affixed postage on presorted parcels.

b. Other Markings. In addition to the basic marking in 2.4.1a, First-Class Mail parcels claiming commercial parcel prices must be marked as follows in a prominent location on the address side of the parcel:

1. Except for parcels paid for by permit imprint postage, parcels claiming commercial base prices must be marked "CommercialBasePrice" or "ComBasePrice."

2. All parcels claiming presorted commercial plus prices must be marked "CommercialPlusPrice" or "ComPlsPrice."

[Revise the title and text of renumbered 2.5 as follows:]

2.5 Standard Mail Markings

2.5.1 Placement and Content

Markings must be placed as follows:

a. Basic Marking. The basic required marking that indicates the class of mail must be printed or produced as part of; directly below; or to the left of the permit imprint or affixed postage as follows:

1. "Standard," "STD," "Presorted Standard," or "PRSRT STD"

2. "Nonprofit Organization," "Nonprofit Org.," or "Nonprofit"

b. Other Markings. Price-specific markings for Standard Mail are "ECRLOT," "ECRWSH," "ECRWSS," and "Customized MarketMail" (or "CMM"). Place price-specific markings in one of the following locations:

1. In the location specified in 2.5.1a.

2. In the address area on the line directly above or two lines above the address if the marking appears alone or included in an optional endorsement line or with carrier route information. If preceded by two asterisks, the price marking may be included in a mailer or manifest keyline or in an MLOCR ink-jet-printed date correction/meter drop shipment line.

* * * * *

430 First-Class Mail

433 Prices and Eligibility

1.0 Prices and Fees for First-Class Mail

1.1 Price Application

[Add new last sentence to 1.1 as follows:]

* * * For prices, see Notice 123-Price List.

1.2 Price Computation for First-Class Mail Parcels

[Revise 1.2 as follows:]

First-Class Mail parcel prices, except for commercial plus prices, are charged per ounce or fraction thereof after the first 3 ounces; any fraction of an ounce over 3 ounces is considered a whole ounce. For example, if a piece weighs 3.2 ounces, the weight (postage) increment is 4 ounces. The minimum postage per addressed piece is that for a piece weighing 3 ounces. First-Class Mail parcels mailed at commercial plus prices pay one price per sortation level, regardless of weight (minimum weight of 3.5 ounces up to less than 16 ounces per parcel).

[Revise title and text of 1.3 to add eligibility standards for the single-piece commercial base parcel price to read as follows:]

1.3 Commercial Base Parcel Prices

For prices, see Notice 123-Price List. First-Class Mail presorted parcels are eligible for commercial base prices. USPS-approved IBI postage meters must print the IBI with the appropriate price marking and electronically transmit transactional data daily to USPS. Nonpresorted First-Class Mail parcels mailed under the following conditions are eligible for single-piece commercial base parcel prices:

a. The residual portion of a presorted mailing prepared under 435.4.0.

b. Nonpresorted mailings for which the postage is paid by permit imprint, IBI meter, or PC Postage. Mailings using permit imprints must contain at least 200 pieces or 50 pounds.

[Renumber current 1.4 through 1.7 as new 1.5 through 1.8 and add new 1.4 as follows:]

1.4 Commercial Plus Prices

For prices, see Notice 123-Price List. Presorted First-Class Mail machinable parcels weighing over 13 ounces, but less than 16 ounces, are eligible for commercial plus prices. Customers mailing presorted machinable parcels less than 13 ounces may optionally pay commercial plus prices instead of commercial base prices. Permit holders using Merchandise Return Service (MRS) for First-Class Mail machinable parcels are eligible for commercial plus parcel prices if the total of their First-Class Mail MRS and outgoing volume meet the minimum volume commitment. First-Class Mail presorted parcels over 13 ounces that do not meet all the standards for commercial plus prices must bear postage at the applicable Priority Mail prices. Commercial plus prices are available for customers presenting mailings of 500 or more presorted parcels who:

a. Establish a customer commitment agreement with the Postal Service to mail more than 5000 First-Class Mail machinable parcels at commercial plus prices in a calendar year. Customers may contact their account manager or the manager, Shipping Support (see

608.8.0 for address) for additional information.

b. Pay for postage by using a permit imprint.

c. Enter a minimum of 500 pieces of mail for each presorted mailing or a minimum of 200 pieces or 50 pounds of mail for each single-piece mailing.

d. Use the Electronic Verification System (eVS) or submit an electronic postage statement with a computerized manifest.

1.5 Surcharge

Unless prepared in 5-digit/scheme containers, presorted parcels are subject to a surcharge if any of the following characteristics apply:

[Revise 1.5 by deleting current item a in its entirety and redesignating current items b and c as new items a and b, and revise to read as follows:]

a. The parcels do not bear a GS1–128 or Intelligent Mail package barcode.

b. The parcels weigh less than 2 ounces or are irregularly shaped, such as rolls, tubes, and triangles.

* * * * *

3.0 Basic Standards for First-Class Mail Parcels

3.1 Description of Service

[Delete the heading of current 3.1.1, Service Objectives, in its entirety and make the text of current 3.1.1 the new text of 3.1.]

[Delete the current 3.1.2, Price Options, in its entirety.]

* * * * *

4.0 Price Eligibility for Presorted First-Class Mail Parcels

* * * * *

4.4 Single-Piece Price

[Revise the text of 4.4 as follows:]

Single-piece prices apply to presorted parcels in a mixed ADC sack, with no minimum volume requirement. Nonpresorted parcels are also eligible for commercial single-piece parcel prices. See 1.3b for commercial base eligibility and 1.4 for commercial plus eligibility.

434 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

[Revise the text of 1.1 as follows:]

Postage for presorted First-Class Mail parcels must be paid with affixed postage or permit imprint as specified below. All pieces in a mailing must be paid with the same method unless otherwise authorized by Business Mailer Support (see 608.8.0 for address).

[Revise the title of 2.0 as follows:]

2.0 Postage Payment for Presorted First-Class Mail Parcels

[Revise the title and text of 2.1 as follows:]

2.1 Permit Imprint Postage

All presorted First-Class Mail parcels may bear permit imprint postage under 604.5.0. Parcels entered at commercial plus prices and all mail manifested using the Electronic Verification System (eVS) under 705.2.9 must be paid using a permit imprint. A permit imprint may be used for mailings of nonidentical-weight pieces only if authorized by Business Mailer Support.

2.2 Affixed Postage for Presorted First-Class Mail

[Revise the text of 2.2 as follows:]

Each presorted First-Class Mail parcel bearing affixed postage (not allowed for commercial plus parcels) must bear:

a. The full postage at the First-Class Mail price for which it qualifies.

b. A precanceled stamp (see 604.3.0) or the full postage at the lowest applicable First-Class Mail 1-ounce price, and full postage on pieces with postage evidencing imprints (see 604.4.0) for additional ounce(s) and any fees.

c. Postage in an amount not less than the lowest applicable First-Class Mail parcel price if authorized by Business Mailer Support, plus full postage for additional ounces.

2.3 Additional Postage

[Revise the text of 2.3 as follows:]

Additional postage for pieces with insufficient postage must be paid using an advance deposit account or a meter stamp affixed to the postage statement.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

2.0 Stamped Stationery

2.1 Plain Stamped Envelope

* * * * *

2.1.2 Availability

[Revise 2.1.2 by deleting item b in its entirety and incorporating item a into the introductory text to read as follows:]

Plain stamped envelopes are available at all Post Offices. Only sizes 6¾ and 10 envelopes are sold in less than full box lots (a full box contains 500 envelopes).

* * * * *

2.2 Personalized Stamped Envelopes

* * * * *

2.2.6 Optional Information

The following endorsements and instructions printed in at least 8-point type may be included as part of the return address:

* * * * *

[Revise item 2.2.6b as follows:]

a. Any sender instruction that specifies a period for holding mail, not fewer than 3 and not more than 30 days. The instruction must appear directly above the return address.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–1702 Filed 1–26–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R05–RCRA–2010–0843; SW–FRL–9259–1]

Hazardous Waste Management System; Identifying and Listing Hazardous Waste Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition submitted by Owosso Graphic Arts Inc. (OGAI), in Owosso, Michigan to exclude (or "delist") up to 244 cubic yards of wastewater treatment sludge per year from the list of hazardous wastes.

The Agency has decided to grant the petition based on an evaluation of waste-specific information provided by OGAI and a consideration of public comments received. This action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill permitted, licensed, or registered by a State to manage industrial solid waste. The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

DATES: This final rule is effective on January 27, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. [EPA–R05–RCRA–2010–0843]. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* 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 at the Records Center, 7th floor, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Christopher Lambesis at (312) 886–3583 before visiting the Region 5 office. The public may copy material from the regulatory docket at 15 cents per page.

FOR FURTHER INFORMATION CONTACT: Christopher Lambesis, Land and Chemicals Division, (Mail Code: LR–8J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 886–3583; fax number: (312) 692–2195; e-mail address: *lambesis.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. *See* 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background documents for a listed waste.

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes and to ensure that future generated wastes meet the conditions set.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a "generator specific" basis.

II. OGAI's Petition

A. What waste did OGAI petition EPA to delist?

In May 2005, OGAI petitioned EPA to exclude an annual volume of 244 cubic yards of F006 wastewater treatment sludges generated at its facility located in Owosso, Michigan from the list of hazardous wastes contained in 40 CFR 261.31. OGAI generates this wastewater treatment sludge from spent solutions that were used for chemical etching of magnesium plates and claims that it does not meet the criteria for which F006 was listed (*i.e.,* cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous.

B. What information was submitted in support of this petition?

OGAI submitted detailed descriptions of the process generating the waste including Material Safety Data Sheets (MSDSs) and other information regarding the makeup of materials contributing to the sludge. OGAI also asserted that its waste does not meet the criteria for which F006 waste was listed and there are no other factors that might cause the waste to be hazardous.

To support its assertion that the waste is not hazardous, OGAI collected numerous samples of the waste for analysis. Sample collection and chemical analysis were conducted in accordance with a pre-approved sampling plan. The data was validated and any deviations from the sampling plan were reviewed and documented. The data was assessed for its intended use and, in some instances, additional samples were collected or analysis performed to confirm the data were of sufficient quality.

III. EPA's Evaluation and Public Comments

A. What decision is EPA finalizing and why?

Today the EPA is finalizing an exclusion for up to 244 cubic yards of wastewater treatment sludge generated annually at the OGAI facility in Owosso, Michigan. OGAI petitioned EPA to exclude, or delist, the wastewater treatment sludge because OGAI believed that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

On November 4, 2010, EPA proposed to exclude or delist the wastewater treatment sludge generated at OGAI's facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (75 FR 67919). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the wastewater treatment sludge from OGAI's facility should be excluded from hazardous waste control.

B. Public Comments Received and EPA's Response

EPA received one public comment expressing concern over temporal variability of the waste and the potential for data manipulation. In response, we believe OGAI and EPA adequately addressed these concerns in the preparation of the petition. OGAI sampled the waste 15 different times over a span of almost six years. All samples were collected in accordance with an EPA-approved sampling plan or under specific approval of Agency scientists. EPA and OGAI responded to two changes in process chemicals with

additional rounds of sampling and all data were scrutinized for adequacy by independent validation. Several issues with quality assurance were documented and corrective measures implemented.

Conservative assumptions were applied to the data before use to ensure the safety of the waste such as: assuming that all chromium present was comprised of hexavalent chromium (the most toxic form); assuming 100% of a hazardous constituent present in the waste leached into the hypothetical landfill; and including conservative quantitation of tentatively identified compounds in analysis by mass spectoscopy. EPA representatives also visited the facility to review the waste generating process. Furthermore, OGAI remains obligated to periodically sample the waste and report changes to the process (see below).

IV. Final Rule

A. What are the terms of this exclusion?

OGAI must dispose of this waste in a Subtitle D landfill permitted or licensed by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. OGAI must also continue to determine whether the waste is identified in subpart C of 40 CFR pursuant to § 261.11(c). This exclusion applies only to a maximum annual volume of 244 cubic yards and is effective only if all conditions contained in this rule are satisfied.

B. When is the delisting effective?

This rule is effective January 27, 2011. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

C. How does this action affect the States?

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: January 19, 2011.

Bruce F. Sypniewski,

Acting Director, Land and Chemicals Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 the following waste stream is added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Owosso Graphic Arts Inc.	Owosso, Michigan	Wastewater treatment sludges, F006, generated at Owosso Graphic Arts, Inc. (OGAI) facility in Owosso, Michigan, at a maximum annual rate of 244 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of January 27, 2011. 1. *Delisting Levels:* (A) The constituent concentrations measured in a leachate extract may not exceed the following concentrations (mg/L): antimony—3.15; arsenic—0.25; cadmium—1; chromium—5; lead—5; and zinc—6,000. (B) Maximum allowable groundwater concentrations (mg/L) are as follows: antimony—0.006; arsenic—0.0005; cadmium—0.005; chromium—0.1; lead—0.015; and zinc—11.3. 2. *Annual Verification Testing:* To verify that the waste does not exceed the specified delisting concentrations, OGAI must collect and analyze one waste sample on an annual basis using methods with appropriate detection concentrations and elements of quality control. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1 percent of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. A total analysis of the waste (accounting for any filterable liquids and the dilution factor inherent in the TCLP method) may be used to estimate the TCLP concentration as provided for in section 1.2 of Method 1311. 3. *Changes in Operating Conditions:* OGAI must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. OGAI must handle wastes generated after the process change as hazardous until it has: demonstrated that the wastes continue to meet the delisting concentrations in section 1; demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from EPA. 4. *Data Submittals:* OGAI must submit the data obtained through verification testing or as required by other conditions of this rule to U.S. EPA Region 5, RCRA Delisting Program (LR–8J), 77 West Jackson Boulevard, Chicago, IL 60604. The annual verification data and certification of proper disposal must be submitted upon the anniversary of the effective date of this exclusion. OGAI must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. OGAI must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		5. *Reopener Language*—(A) If, anytime after disposal of the delisted waste, OGAI possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (1), then OGAI must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify OGAI in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing OGAI with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. OGAI shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days OGAI presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * * *

[FR Doc. 2011–1768 Filed 1–26–11; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05–337, CC Docket No. 96–45; FCC 10–205]

High-Cost Universal Service Support and Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission takes action to reclaim high-cost universal service support surrendered by a competitive eligible telecommunications carrier (ETC) when it relinquishes ETC status in a particular state. This change would reduce the overall cap on competitive ETC support in a state when a competitive ETC relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state.

DATES: Effective January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in WC Docket No. 05–337, CC Docket No. 96–45, FCC 10–205, adopted December 30, 2010, and released December 30, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Introduction

1. In this Order, we take action to reclaim high-cost universal service support surrendered by a competitive eligible telecommunications carrier (ETC) when it relinquishes ETC status in a particular state.

II. Discussion

2. We adopt the proposal to amend the interim cap rule (WC Docket No. 05–337, CC Docket No. 96–45, 23 FCC Rcd 8834 (2008)) so that a state's interim cap amount will be adjusted if a competitive ETC serving the state relinquishes its ETC status. As discussed in the *September 2010 NPRM,* 75 FR 56494, September 16, 2010, the goal of the *Interim Cap Order,* 73 FR 37882, July 2, 2008, is to rein in high-cost universal service disbursements for potentially duplicative voice services. We find that the proposal is consistent with that goal. It would reduce the overall cap on competitive ETC support in a state when a competitive ETC relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state. Providing the excess support to other competitive ETCs in a state would not necessarily result in future deployment of expanded voice service, much less broadband service. It could simply subsidize duplicative voice service. On the other hand, reducing the pool of support in a state could enable excess funds from the legacy high-cost program to be used more effectively to advance

universal service broadband initiatives, as recommended by the National Broadband Plan. We conclude, on balance, that the public interest would be better served by taking this interim step to reclaim such support rather than redistributing it, particularly as we proceed with broader reforms to transition to a universal service system that promotes broadband deployment more directly.

3. Accordingly, if a competitive ETC relinquishes its ETC status in a state, the cap amount for that state will be reduced by the amount of capped support that the competitive ETC was eligible to receive in its final month of eligibility, annualized. When a carrier relinquishes its ETC designation, USAC shall calculate the new annual interim cap amount for the state in which the carrier had been a competitive ETC. The cap shall be reduced by the amount of support that the ETC was eligible to receive for the last full month during which the ETC retained its designation, annualized. The new cap will be effective beginning the first full month following the effective date of the relinquishment. When a carrier relinquishes its ETC designation in the middle of a funding year, the new cap will be applied only to the remainder of the year on a pro rata basis. We recognize that the ultimate amount that a carrier is eligible to receive during a particular month may not be finalized immediately due to the effect of true-ups on certain high-cost support mechanisms. We instruct USAC to implement the revised interim cap provisionally as of the effective date of the relinquishment and to revise the support amounts for the remaining competitive ETCs as necessary, subject to true-up.

4. We further conclude that there is good cause for this rule change to be effective upon release. The primary purpose of the 30-day effectiveness rule—to allow affected parties sufficient time to take action to comply—does not come into play in this case since ETCs do not have to act to comply with the new rule. Sprint has notified us that it plans to relinquish its ETC designations in a number of states effective December 31, 2010. If the change to the interim cap rule is not effective before then, the high-cost support that Sprint would have been eligible to receive—approximately $5.4 million—will be redistributed to other competitive ETCs, frustrating the very purpose of this rule change.

III. Procedural Matters

A. Paperwork Reduction Act

5. This order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002.

B. Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking* in WC Docket No. 05–337. The Commission sought comment on the possible significant economic impact on small entities by the policies and rules proposed in the *Order and Notice of Proposed Rulemaking (NPRM),* including comment on the IRFA. We received IRFA-specific comments from MTPCS, LLC d/b/a Cellular One and its affiliates (MTPCS), and reply comments from Verizon and Verizon Wireless (Verizon). These comments are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Need for, and Objectives of, the Order

7. In this *Order,* the Commission amends its rule to reclaim high-cost universal service support surrendered by a competitive eligible telecommunications carrier (ETC) when it relinquishes ETC status in a particular state.

8. We note that the rule would reduce the overall cap on competitive ETC support in a state when a competitive ETC relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state. Providing the excess support to other competitive ETCs in a state would not necessarily result in future deployment of expanded voice service. It could simply subsidize duplicative voice service. On the other hand, reducing the pool of support in a state could enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband initiatives. We conclude, on balance, that the public interest would be better served by taking this interim step to reclaim such support rather than redistributing it, particularly as we proceed with broader reforms to transition to a universal service system that promotes broadband deployment more directly.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

9. In the IRFA, we stated that, under certain circumstances, our proposed action, if adopted, may have a significant economic impact on other competitive ETCs that are small entities. For example, as described in footnote 31 of the *NPRM,* the reduction in size of a state interim cap amount could negatively affect a competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount. While the designation of another competitive ETC would have an impact on the support received by the small entity even without the adoption of the proposed rule, the proposed rule could magnify that impact. We sought comment on our proposal, in part to consider its necessity and any alternatives. In its comments, MTPCS contends that, in accordance to the Small Business Act, the Commission should not harm the interests of small business concerns and the customers who seek their services. MTPCS contends the reduction in competitive ETC support under the cap has limited the effectiveness of companies in their efforts to meet the goals of the universal service provisions, and the proposed changes would exacerbate this situation. MTPCS further contends that, in violation of the Small Business Act, the Commission failed to consider significant alternatives to the proposals which might minimize the significant economic impact of the rule on small entities. Verizon disagrees. As set forth more fully below in Section V, we believe that our actions in the *Order* are consistent with the RFA.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

10. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. 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 SBA.

11. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

12. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

13. *Small Governmental Jurisdictions.* 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." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

14. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

16. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

17. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

18. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

20. *Broadband Personal Communications Service.* The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

21. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In

2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

22. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

23. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

24. In 2007, the Commission adopted the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

25. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

26. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as

small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

27. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

28. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

29. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

30. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

31. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

32. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

33. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in 2007. In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Neither of the two winning bidders sought such designated entity status.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. The *Order* does not propose any reporting, recordkeeping, or other compliance requirements.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (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.

36. In this *Order,* we amend our rule to reclaim high-cost universal service support surrendered by a competitive ETC when it relinquishes ETC status in a particular state. We note that the rule would reduce the overall cap on competitive ETC support in a state when a competitive ETC relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state. Providing the excess support to other competitive ETCs in a state would not necessarily result in future deployment of expanded voice service but it may subsidize duplicative voice service. Reducing the pool of support in a state would enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband initiatives. We believe, on balance, that the public interest would be better served by taking this interim step to reclaim such support rather than redistributing it, particularly as we proceed with broader reforms to transition to a universal service system that more directly promotes broadband deployment.

37. MTPCS contends that the Commission is adopting the proposed rule without considering any significant alternative to minimize its effect on small entities. In addition, MTPCS contends that reining in high-cost disbursements need not be accomplished at the expense of competitive ETCs. Verizon disagrees. Verizon argues that adjusting a state's

existing competitive ETC cap when a carrier relinquishes its ETC status does not in any way impact the amount of existing support paid to other competitive ETCs, small businesses or otherwise, in the state. Verizon explains that, in such circumstances, the relinquished support is simply returned to the USF. Verizon indicates that the Commission is merely required by the Regulatory Flexibility Act to describe any significant alternatives that it considered. Verizon reasons that, as a practical matter, there is no alternative that the Commission need consider. The proposal does not reduce existing funding to any competitive ETC. Verizon argues that, even if it did, the universal service program was never intended to fund competition anyway. We conclude that, because the purpose of the adopted rule is to reduce the amount of high-cost universal service support received by competitive ETCs, no significant alternative could be chosen that would minimize the effect of the adopted rule.

VI. Report to Congress

38. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register.**

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–1166 Filed 1–26–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 18
Thursday, January 27, 2011

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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0038]

RIN 1625–AA87

Security Zones; Cruise Ships, Port of San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend 33 CFR 165.1108, Security Zones; Cruise Ships, Port of San Diego, California, by providing a common description of all security zones created by this section to encompass only navigable waters within a 100 yard radius around any cruise ship that is located within the San Diego port area landward of the sea buoys bounding the Port of San Diego. This notice of proposed rulemaking is necessary to provide for the safety of the cruise ship, vessels, and users of the waterway. Entry into these security zones will be prohibited unless specifically authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before February 28, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0038 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Commander Michael B. Dolan, Prevention, Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7261, e-mail *Michael.B.Dolan@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0038), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0038" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0038" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we

determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Based on experience with actual security zone enforcement operations, the COTP San Diego has concluded that a security zone encompassing all navigable waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is within the San Diego port area inside the sea buoys bounding the Port of San Diego would provide for the safety of the cruise ship, vessels, and users of the waterway.

Discussion of Proposed Rule

The Coast Guard is establishing a permanent security zone regulation. The security zones created by this rule will encompass all navigable waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is within the San Diego port area inside the sea buoys bounding the Port of San Diego. These security zones are necessary to provide for the safety of the cruise ship, vessels, and users of the waterway. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

Paragraph (b)(2) of the existing 33 CFR 165.1108 includes reference to the shore area. The COTP has determined that security zones for moored cruise ships in San Diego Harbor need not include any shore area, as passenger terminals used for cruise ship operations are regulated under regulations in 33 CFR part 105 issued under authority of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295). The Coast Guard has issued a temporary final rule that suspends § 165.1108 (b)(2) through June 20, 2011, while this rulemaking is conducted. See 75 FR 82243, December 30, 2010.

This rule would revise both 33 CFR 165.1108 (b) and (c). In addition to clarifying the area covered by security zones created by § 165.1108 (b), this proposed rule would simplify the regulation by not distinguishing between anchored cruise ships, moored cruise ships and cruise ships underway. Also, we propose to revise paragraph (c) to make it clearer that persons and vessels may not enter these security zones without first obtaining permission of the Captain of the Port San Diego.

Regulatory Analyses

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.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that full Regulatory Evaluation is unnecessary. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. In addition, due to National Security interests, the implementation of this security zone regulation is necessary for the protection of the United States and its people. The size of the zones is the minimum necessary to provide adequate protection for cruise ships.

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 or anchor in San Diego Bay within a 100-yard radius of cruise ships covered by this rule.

This security zone regulation will not have a significant economic impact on a substantial number of small entities because vessel traffic can pass safely around the zones.

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 proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of security zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In § 165.1108, revise paragraphs (b) and (c) to read as follows:

§ 165.1108 Security Zones; Moored Cruise Ships, Port of San Diego, California.

* * * * *

(b) *Location.* The following areas are security zones: All navigable waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is located within the San Diego port area landward of the sea buoys bounding the Port of San Diego.

(c) *Regulations.* Under regulations in 33 CFR part 165, subpart D, a person or vessel may not enter into or remain in the security zones created by this section unless authorized by the Coast Guard Captain of the Port, San Diego (COTP) or a COTP designated representative. Persons desiring to transit these security zones may contact the COTP at telephone number (619) 683–6495 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

* * * * *

Dated: January 20, 2011.

T.H. Farris,

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

[FR Doc. 2011–1804 Filed 1–26–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0036; FRL–9258–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Volatile Organic Compound Reinforced Plastics Composites Production Operations Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a new rule for the control of volatile organic compound (VOC) emissions from reinforced plastic composites production operations to Ohio's State Implementation plan (SIP). This rule applies to any facility that has reinforced plastic composites production operations. This rule is approvable because it satisfies the requirements for reasonably available control technology (RACT) under the Clean Air Act (CAA).

DATES: Comments must be received on or before February 28, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0036, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 692–2511.
- *Mail:* John Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0036. 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* website 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 legal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *Rosenthal.steven@epa.gov.*

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

I. What should I consider as I prepare my comments for EPA?

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What action is EPA taking today and what is the purpose of this action?

EPA is proposing to approve into Ohio's SIP new rule OAC 3745–21–25 "Control of VOC Emissions from Reinforced Plastic Composites Production Operations." This rule was submitted by the Ohio EPA to EPA on November 10, 2010, and contains requirements that satisfy RACT standards for VOC emissions from reinforced plastic composites production operations. This rule is needed to establish VOC RACT requirements for such operations to replace the requirements contained in OAC rule 3745–21–07 (Control of emissions of organic materials from stationary sources) because 3745–21–07 has been revised by Ohio, and the revised rule (which is the subject of a separate **Federal Register** action) excludes reinforced plastic composites production operations.

III. What is EPA's analysis of Ohio's reinforced plastics composites rule?

As discussed below, this rule satisfies RACT requirements and is consistent with the CAA and EPA regulations. A general discussion of the main elements of OAC 3745–21–25 (Control of VOC emissions from reinforced plastic composites production operations) follows:

3745–21–25(A) Applicability

(A)(1)—This rule applies to any facility that has reinforced plastic composites production operations, except as otherwise provided in paragraph (A)(2).

(A)(2)—This paragraph exempts any facility in which potential VOC emissions from all reinforced plastic composites production operations combined is 10.0 tons per year or less and requires that up-to-date records be kept of the potential to emit VOC from all reinforced plastic composites production operations. However, consistent with EPA's once in/always in policy, this exclusion is not available for any facility that has, or once had, a potential to emit for VOC equal to or greater than 10.0 tons per year for all reinforced plastic composites production operations combined on or after December 14, 2010 (12 months from the effective date of an earlier version of this rule).

(A)(3)—Upon achieving compliance with this rule, the reinforced plastic composites production operations at the facility are not required to meet the requirements of 3745–21–07, which is Ohio's general rule for the control of organic materials from stationary sources that are not controlled by another specific VOC RACT rule. This exemption from 3745–21–07 is appropriate because 3745–21–25 contains VOC RACT requirements specific to reinforced plastic composites production operations, whereas 3745–21–07 is a general rule that covers a number of source categories.

However, the applicability cutoff of 3745–21–07 is 8 lbs/hour or 40 pounds/day as compared to a 25 tons VOC/year cutoff for the control requirements of 3745–21–25 for sheet molding compound (SMC) manufacturing operations. The main purpose of this

rule is the control of such SMC operations because SMC machines were previously covered by 3745–21–07. Ohio EPA submitted a October 25, 2010, demonstration under section 110(l) of the CAA that the less stringent applicability cutoff in 3745–21–25 does not interfere with attainment of the National Ambient Air Quality Standards, nor interfere with any other requirement of the CAA. Ohio documented that the worst case maximum theoretical increase in uncontrolled emissions is 159 tons of VOC/year, but that the actual emission increase from this change in applicability cutoffs would be 7.1 tons of VOC/year.

In December, 2007, Ohio EPA promulgated rules in OAC Chapter 3745–110, "NO_X RACT." These rules addressed the control of emissions of oxides of nitrogen (NO_X) from stationary sources such as boilers, combustion turbines, and stationary internal combustion engines. The rules were made applicable as an attainment strategy in the Cleveland-Akron-Lorain ozone moderate nonattainment area. On September 15, 2009, EPA redesignated the Cleveland-Akron-Lorain metropolitan area as attainment for the 1997 8-hour ozone NAAQS. At the same time, EPA approved a waiver, for this area, from the NO_X RACT requirements of section 182(f) of the CAA. Ohio's NO_X RACT rules are, therefore, surplus and can be used to offset any increase in emissions from SMC machines in Ohio. Ohio obtained 538 tons NO_X/year actual (and surplus) emission reductions from the Arcelor-Mittal facility as a result of the installation of low NO_X burners in its three reheat furnaces. The requirement for these low NO_X burners is permanent and enforceable because they are needed to comply with OAC 3745–110, Ohio's NO_X RACT rule. In the Cleveland-Akron-Lorain area, the ratio of NO_X emissions to VOC emissions is approximately 1.36 pounds NOx/pound VOC. Applying this factor, the VOC offset potential for the Arcelor-Mittal facility NO_X reductions is 396 tons VOC/year.

3745–21–25(B) Definitions—The definitions applicable to this rule are contained in paragraph (GG) of (OAC) Rule 3745–21–01. These definitions clearly and adequately define those terms which are needed to understand, and implement, the requirements contained in this rule.

3245–21–25(C) Affected operations—This section lists those reinforced plastic composites production operations subject to this rule such as open molding; compression/injection molding; and centrifugal casting. All of the appropriate affected operations are listed in this section. Of particular note are SMC manufacturing operations, a source category for which there are a number of sources previously covered by 3745–21–07. The main pollutant from reinforced plastic composites manufacturing operations is styrene, which is both a VOC and a hazardous air pollutant. Except for SMC machines, the other reinforced plastic composites manufacturing operations are adequately controlled by the National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production. (40 CFR part 63 subpart WWWW)

3245–21–25(D) VOC Control requirements—All affected operations must meet the work practice standards in Table 1 of this rule. If the combination of all reinforced plastic composites operations at a facility emits less than 100 tons of VOC per year, then the affected operations must meet the emission limits in Table 2 of this rule. If the combination of all reinforced plastic composites operations at a facility emits 100 tons or more of VOC per year, then the affected operations must reduce the total VOC emissions from these operations by at least 95 percent or, as an alternative, meet the VOC emission limits in Table 3 of this rule. Also, any SMC machine with uncontrolled VOC emissions of 25.0 tons or more per rolling 12-month period must be controlled by a VOC emission control system that reduces the VOC emissions from the SMC manufacturing machine by at least 95 percent. A provision of the rule allows for a site-specific alternative requirement if approved by EPA. These control requirements and applicability cutoffs are consistent with RACT.

3745–21–25(E) Emission factor determination—This section provides acceptable procedures for determining emission factors to determine compliance with certain VOC emission limits in table 2 and table 3 of this rule and to calculate VOC emissions. Emission factors approved by EPA, such as the emission factors in AP–42, may be used in lieu of a stack test. However, if a stack test is used the stack test results would supersede any published emission factors. In order to determine the monomer content of resins and gel coats, information provided by the material manufacturer, such as manufacturer's formulation data and material safety data sheets, may be relied upon unless contradicted by actual measurement results.

3745–21–25(F) Calculation of facility's VOC emission threshold—This section establishes the procedures, including use of a calculated emission factor and conducting performance testing, for calculating the facility's VOC emissions threshold in tons per year for purposes of determining which requirements apply under paragraph (D) of this rule.

3745–21–25(G)–(I)—These paragraphs provide acceptable options for meeting the VOC emissions limits for open molding and centrifugal casting operations, continuous lamination/casting operations, and pultrusion operations.

3745–21–25(J)–(K)—These paragraphs apply to wet out area(s) and oven(s) for continuous lamination/casting operations. Paragraph (J) provides an acceptable method for calculating the annual uncontrolled and controlled VOC emissions from these operations, and paragraph (K) provides an acceptable method for determining the capture efficiency of the enclosure of the wet-out area and the capture efficiency of ovens(s) from these operations.

3745–21–25(L)–(N)—These paragraphs provide acceptable procedures for calculating how much gel coat and resin is applied to the line and also for calculation of the percent reduction and a VOC emission factor to demonstrate compliance for continuous lamination/casting operations.

3745–21–25(O) Demonstration of Continuous compliance—This paragraph provides acceptable methods for establishing continuing compliance with each VOC control requirement in paragraph (D) of this rule that applies to the affected operations.

3745–21–25(P) Recordkeeping requirements—This paragraph establishes sufficient recordkeeping requirements to determine a facility's applicability and compliance status including all data, assumptions, and calculations used to determine monomer contents and VOC emission factors. There are also specific recordkeeping requirements for SMC manufacturing machines in paragraph (P)(2).

3745–21–25(Q) Reporting requirements—Semiannual compliance status reports are required for any reinforced plastic composites production operations subject to this rule. These compliance status reports must state that there were no deviations from VOC emission limitations, operating limits, or work practice standards during the reporting period. If such a deviation does occur, then detailed information is required on the deviation(s).

3745–21–25(R) Compliance dates—This paragraph requires affected operations for which installation commenced before December 14, 2009 (the effective date of an earlier version of this rule) to comply with the requirements of this rule by 12 months from December 14, 2009. Any affected operation for which installation commenced after December 14, 2009, must comply upon initial startup of the affected operation. These are reasonable compliance dates.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–1771 Filed 1–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–210; FCC 11–3]

Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules for a pilot program to distribute funds for the National Deaf-Blind Equipment Distribution Program (NDBEDP) established by Congress in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The law directs the Commission to establish rules within six months of enactment of the new statute that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind. The goal of this NDBEDP is to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind.

DATES: Comments are due on or before February 4, 2011. Reply comments are due on or before February 14, 2011. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before March 28, 2011.

ADDRESSES: You may submit comments, identified by [CG Docket No. 10–210], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the *Federal eRulemaking Portal: http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 10–210. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.
- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.* 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. All hand deliveries must be held together with rubber bands or fasteners.
- Envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- 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.

In addition, document FCC 10–210 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via e-mail at *PRA@fcc.gov* and *Cathy.Williams @fcc.gov* and Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas _A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–7126 or e-mail *Diane.Mason@fcc.gov.*

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via e-mail *Cathy. Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals,* Notice of Proposed Rulemaking (*NPRM*), document FCC 11–3, adopted and released on January 14, 2011, in CG Docket No. 10–210.

The full text of document FCC 11–3 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *http://www. bcpiweb.com.* Document FCC 11–3 can also be downloaded in Word or Portable Document Format (PDF) at *http://www. fcc.gov/cgb/policy.* 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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/ PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed. Pursuant to 47 CFR 1.1200 *et. seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due March 28, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–XXXX.

Title: Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions; Federal government; State, local or Tribal governments.

Number of Respondents and Responses: 106 respondents and 583 responses.

Estimated Time per Response: 15 to 120 hours.

Frequency of Response: Annual, on occasion, one-time, monthly, and semi-annually reporting requirements; Record keeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found at sections 1, 4, 225, 303(r), and 619 of the Communications Act of 1934, as amended (Act), 47 U.S.C. 151, 154, 225, 303(r), and 619 of the Communications Act of 1934, as amended.

Total Annual Burden: 22,472 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, "Informal Complaints and Inquiries." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 "Informal Complaints and Inquiries", in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Act Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/ omd/privacyact/ Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: In document FCC 11–3, the Commission proposes rules that would provide State equipment distribution programs (EDPs) and potentially qualifying public or private entities the opportunity to apply for Commission certification in order to be eligible to operate an equipment

distribution program under the NDBEDP. The proposed rules would also require program recipients of funding under the NDBEDP to submit the proposed data to the Fund Administrator every six months necessary to ensure that the Fund is being used for the purpose intended by Congress. Further, the proposed rules would require program recipients of funding under the NDBEDP to submit data and report on: (1) Administrative expenses incurred in participating in this program; (2) complaints received on the equipment and appeals on eligibility; and (3) other consumer related disputes. Finally, the proposed rules would require program recipients to retain electronic records of the proposed data at a reasonable period of time necessary for administrative review and audits.

Synopsis

1. In document FCC 11–3, the Commission proposes rules to implement section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260. The CVAA authorizes the FCC to allocate $10 million annually from the interstate relay fund (TRS Fund) for the NDBEDP. The need for an effective equipment distribution program for communications access for people who are deaf-blind has been well documented. While many States already distribute some specialized communications equipment to people with disabilities through their own State equipment distribution programs (EDPs), many, if not most, have been unable to afford the extremely high costs associated with communications equipment needed by people who are deaf-blind.

Comments received in response to the Public Notice that initiated this proceeding provide further evidence of the need for this program. *See Consumer And Governmental Affairs Bureau Seeks Comment On Implementation Of Requirement To Define Programs For Distribution Of Specialized Customer Premises Equipment Used By Individuals Who Are Deaf-Blind,* Public Notice, document DA 10–2112, released November 3, 2010 in CG docket number 10–210 (*NDBEDP PN*).

2. People who are deaf-blind may have varying levels of residual sight and hearing. While some may be born with significant levels of hearing and vision loss, others lose their sight and hearing gradually throughout their lifespan; and for some, deafness and blindness are experienced as a result of an illness, injury, or aging. These varying levels of disability, together with the geographically diverse nature of this population, present novel challenges for the Commission in its efforts to develop a nationwide equipment distribution program that effectively meets the communication needs of these individuals. The establishment of permanent rules for this program must be informed by both data and experience.

3. For this reason, the Commission proposes to implement an eighteen-month pilot program of the NDBEDP, with interim regulations. The Commission believes it is prudent to engage in such a trial program because the experiences gained and data gathered will provide us with a more complete and practical understanding of how to ensure the best use of the funds available under this program for the intended population. The Commission further proposes that it reserve the option to extend the pilot program for up to an additional six months, for a total of two years if the Commission determines that such additional time is needed for this assessment.

4. The proposed pilot program relies heavily on currently operating State EDPs, and turns to alternative local distribution efforts only where State entities are not available to participate in this national program. During this trial period, the Commission will be gathering extensive data to build a foundation for the development of permanent rules for the NDBEDP, which will be adopted through a future rulemaking proceeding.

Equipment Distribution Programs

5. The Commission has reviewed the benefits and disadvantages of utilizing the State equipment distribution programs (EDPs) and believes that on balance, the use of these programs for a pilot program would be appropriate, with certain safeguards to protect against State program eligibility criteria that are not consistent with the CVAA. Specifically, if a State has an established EDP that is willing to participate in this program and is approved by the Commission, the Commission proposes that such program become the sole authorized entity for the State to receive compensation from the TRS Fund for the distribution of equipment to that State's deaf-blind residents. For States that do not have an EDP or that have an EDP that is not approved to participate in this program, the Commission proposes allowing other programs (*e.g.,* vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind) or private entities (*e.g.,* independent living centers, organizational affiliates, or private schools) to apply to the Commission for certification to distribute this specialized CPE in the State. The Commission further proposes that the factors to be considered in determining whether to grant certification of a local program—as well as in selecting among multiple applicants—include the extent to which each applicant has:

- Expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population;
- Adequate staffing and facilities to administer the program;
- Experience with the distribution of specialized CPE, especially to people who are deaf-blind;
- The ability to install specialized CPE covered under the program and train users on how to use that equipment;
- The ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and
- The ability to distribute equipment and related services to eligible individuals throughout the State (including to remote areas), either directly or in coordination with other local programs.

6. The Commission seeks comment on this approach as well as on other criteria it should add to this list. The Commission proposes to provide notice to the public of which States will participate in the NDBEDP pilot program via their State EDP, after which the Commission proposes to commence the process of accepting and reviewing applications from other eligible entities (for States in which a State EDP has either not applied or has not been deemed eligible to participate in the NDBEDP). The Commission further seeks comment on the length of time such certification should be granted at the conclusion of this pilot program if it continues utilizing this certification process. In addition, the Commission seeks comment on a proposal to permit coordinated State ventures, so long as a single entity—either the State's EDP or the certified entity discussed above—assumes full oversight and responsibility for all equipment distributed within its State under the NDBEDP and becomes the sole entity authorized to receive compensation from the TRS Fund.

Consumer Eligibility

(1) Definition of Individuals Who Are Deaf-Blind

7. The CVAA defines as eligible for the receipt of specialized CPE low income persons who meet the definition of "individuals who are deaf-blind" contained in the Helen Keller National Center Act (HKNC Act). *See* Pub. L. 111–260, Section 105, citing the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)). The HKNC Act defines such individuals as persons:

(1) Who have a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (2) who have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (3) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

8. The *NDBEDP PN* noted that under the HKNC Act, where individuals "cannot be measured accurately for hearing and vision loss because of cognitive and/or behavioral constraints, they may still be considered deaf-blind if, though functional, they are considered either by themselves or others to be both deaf and blind." *NDBEDP PN* at 2.

9. Commenters largely proposed a flexible interpretation of this definition that would allow determinations of eligibility for equipment to turn on an individual's functional abilities. While the Commission is bound by statute to use the definition of individuals who are deaf-blind in the HKNC Act, the Commission believes it would be appropriate to direct State programs that are authorized to distribute equipment under the NDBEDP to apply this definition in accordance with the underlying intent of the CVAA To this end, the Commission proposes that when applying the second prong of this definition, which requires a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, local distribution programs take into consideration the settings in which the deaf-blind applicant is likely to establish communication with others. Similarly, the Commission proposes that the third prong of the HKNC Act definition, which focuses on the difficulties that an individual with a combination of vision and hearing losses has in attaining independence in daily life activities, apply to the ability of such individual to use the communication services covered by section 105. The Commission seeks comment on this approach.

(2) Verification of Disability

10. While the Commission believes that some verification of a person's disability is necessary to prevent fraud and abuse, given the physical limitations of persons covered under this program, the Commission understands the need to permit verification of one's disability in a non-burdensome manner. Accordingly, the Commission seeks comment on its tentative conclusion that individuals claiming eligibility under the NDBEDP should be permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability. Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician. Any of these professionals must be able to attest to the applicant's physical disability (as defined above), and in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss. The Commission seeks comment on the content of the attestations of such professionals. The commission proposes that the professional provide his or her name, title, and contact information, including address, phone number and e-mail address in the certification. The Commission also seeks comment on whether such professionals should be required to certify to the best of their knowledge that the individual's disability satisfies our eligibility requirements. Alternatively, should the Commission require such certifications be made under penalty of perjury?

(3) Income Eligibility

11. The CVAA limits eligibility in the NDBEDP to individuals who have low incomes. In the *NDBEDP PN,* the Commission sought comment on the appropriateness of applying to the NDBEDP the definition of "qualifying low-income consumer" that is used by the Lifeline and Link up universal service programs.

12. The Commission is concerned about achieving consistency across the States, and unnecessarily complicating the equipment application process by requiring individual evaluations of personal expenses. At the same time, the Commission recognizes the extraordinarily high costs of the specialized equipment covered under this program (which virtually all commenters agree range from $5,000 to $10,000 per person), as well as he unusually high medical and related costs associated with being both deaf and blind. In order to effectively take these costs into consideration, the Commission seeks comment on its proposal to adopt an income threshold, to be applied nationwide, that is 400% of the Federal Poverty Guidelines (FPG). Alternatively, the Commission seeks comment on whether States that already have EDPs with income thresholds should be permitted to use their own low income criteria for distributing equipment under the NDBEDP during the pilot program. For States that do not have an EDP with an income threshold, the Commission seeks comment on a proposal that would allow such programs to use the proposed Federal default income threshold.

13. The Commission seeks comment on its proposal that individuals already enrolled in certain low income programs automatically be deemed eligible to receive equipment as long as the income threshold for eligibility in those programs does not exceed the threshold the Commission establishes for participation in this program. Where individuals are not already enrolled in any such programs, the Commission seeks proposals for a method of verification that is not unduly burdensome.

(4) Other Eligibility Requirements and Considerations

14. The Commission seeks comment on other eligibility requirements, unrelated to disability or income, that might be appropriate for the NDBEDP, such as access to telecommunications or Internet service. The Commission has tentatively proposed not to make employment status an eligibility requirement.

Covered Equipment and Related Services

(1) Scope of Specialized CPE

15. Section 105 of the CVAA authorizes the distribution of specialized CPE needed to make telecommunications services, Internet access service or advanced communications accessible to people who are deaf-blind. Given the varied nature of both the deaf-blind population

and breadth of communication technologies that can meet the individual and unique needs of these individuals, the Commission seeks comment on a proposal that certified NDBEDP programs be given the discretion to determine the specific equipment needed by individual consumers during the NDBEDP's pilot period.

16. The Commission seeks comment on the extent to which certain mainstream equipment should be considered "specialized customer premises equipment" under the statute and should be covered. The Commission also seeks comment on the extent to which funding caps should be imposed on the amount of money available for the purchase of equipment—whether mainstream or adaptive—for each individual who is eligible to receive equipment under the NDBEDP, what the appropriate funding caps should be, and the period of time to which such cap should apply.

17. Finally, seeking to balance the limited funding in this program with advances in technology, the Commission seeks comment on its proposal that individuals be permitted to obtain new equipment every five years and new software on an as needed basis.

(2) Research and Development

18. One of the purposes of the NDBEDP is to ensure that as 21st century communications technologies continue to be developed for the general public, people who are deaf-blind are not left behind. Yet the record in this proceeding suggests that even current communications technologies may not be meeting the needs of the full spectrum of people who are deaf-blind. However, at this stage of the NDBEDP, without a better grasp of the specific gaps in current technologies used by the deaf-blind community, and without a fuller understanding of what the costs of closing those gaps are likely to be, the Commission is concerned that it would be premature to set aside significant funds for research and development (R&D) efforts.

19. Accordingly, the Commission tentatively proposes not to allocate funding at this time for R&D. However, the Commission seeks further comment on the extent to which there is a basis for concluding that R&D is necessary to ensure an effective distribution program because solutions do not exist to meet the needs of certain individuals who make up the deaf-blind population.

20. With respect to conducting inquiries on the equipment needs and preferences of the deaf-blind community, the Commission does not propose setting aside funding for market research at this time. Rather, it is the Commission's expectation that it will be able to collect much of the information that such research would gather through the various reporting requirements that it proposes below. To the extent that the reporting obligations are not adequate for this purpose, the Commission proposes reconsidering the need for specific market research in the context of a future rulemaking proceeding on this program. The Commission seeks comment on this approach, and solicits as well input on ways to encourage and facilitate innovations on a long-term basis, to fully address the communications access needs of the deaf-blind population.

(3) Individualized Assessment of Communication Needs

21. The Commission recognizes a definite need for qualified assistive technology specialists, familiar with both the manner in which deaf-blind people communicate and the range of specialized equipment available, to conduct such assessments to ensure that the equipment given out effectively meets each recipient's unique communications needs. The Commission seeks comment on its proposal that the State EDPs or certified NDBEDP programs (where there is no State EDP) be given the discretion to determine the need for such assessments on a case-by-case basis, and to select the appropriate personnel within their programs to carry out this responsibility. The Commission also seeks comment on its proposal that the costs for such assessments be reimbursable as necessary to facilitate the efficient and effective distribution of equipment for use by people who are deaf-blind.

(4) Installation and Training

22. Given the highly specialized nature of the equipment to be distributed under this program, and the lack of communications experience by its future participants, the Commission proposes that funding be available for the installation of equipment and individualized training of end users associated with equipment distributed under the NDBEDP. The Commission seeks comment on how such training can best be achieved, given the scarcity of experienced trainers, especially in remote and rural areas. The Commission also seeks comment on the extent to which equipment and software manufacturers whose equipment is purchased for the program should provide training or contribute to the costs of providing training for their products.

(5) Maintenance, Repairs and Warranties

23. Given the past practices of State EDPs to include the costs of maintenance and repairs within their local distribution programs, the Commission tentatively concludes that such expenses should be compensable under the NDBEDP where these are not incurred as a result of negligence or misuse on the part of the consumer or distribution program, and seeks comment on this approach. In addition, the Commission seeks comment on the appropriateness of loaning equipment and whether participants in the NDBEDP should have a means of allowing consumers to return equipment that they no longer need so that it can be re-furbished and re-distributed to other individual program participants on an as needed basis.

Outreach and Education About the NDBEDP

24. The Commission seeks comment on the level and types of outreach that will be needed to enable the NDBEDP to fulfill Congress's objective of bringing communication technologies to the deaf-blind community. It is the Commission's expectation that States will have their own incentives to conduct the outreach necessary to get this equipment into the hands of their deaf-blind citizens so they can spend, rather than forfeit, the money allotted to them in any given year. However, because not all States have EDPs, and because some States may not act on this incentive, the Commission seeks comment on whether to set aside a portion of the $10 million for a contract that would be awarded to a national organization to conduct outreach.

Funding

25. In addition to seeking comment on its authority to set aside specific funding portions, the Commission seeks input on suggested amounts for each of their allocations, with a goal of not unduly limiting the amount of money left for the principal purpose of the program, equipment distribution. The Commission tentatively proposes a funding allocation that is proportional to the population at large of each State and seeks comments on this approach. The Commission proposes to require that all costs incurred through participation in the NDBEDP pilot program be reasonable, and seeks comment on whether caps should be placed on the administrative functions related to participation in this program,

and if such caps should vary based on factors such as State deaf-blind population numbers.

26. Distribution of funding can occur in one of two ways: By advance distribution of one-time allocations to eligible programs or via a reimbursement mechanism that pays for equipment already distributed (up to each State's allotment). The Commission tentatively concludes that the latter approach would provide greater accountability, as well as provide the incentives needed for local distribution programs to actively locate and provide equipment to their deaf-blind communities. The Commission seeks comment on this approach, which would periodically reimburse authorized distribution programs for equipment distributed in their States up to the allocable ceiling for that State, and asks at what intervals such payments should be made. The Commission further seeks comment on a proposal to require that any money allocated to a State that is not spent in any given year be returned to the TRS Fund, to be re-distributed to all of the States during subsequent funding years. This approach would ensure that the failure of any program to fulfill its commitment to distribute devices would not penalize people who are deaf-blind because unused funds would continue to be available in future years for their communication needs. Nevertheless, section 105 of the CVAA limits the total amount of support that the Commission may provide to this program for any fiscal year to $10 million. In light of this statutory restriction, the Commission seeks comment on whether it has the discretion to carry over unused allotments to subsequent years.

Oversight and Reporting

27. Data on the distributed equipment and related services in the NDBEPD pilot program will provide the Commission with much needed information about the technology needs and preferences of the deaf-blind community, along with how local distribution programs are able to meet those needs. To this end, the Commission proposes to require that State EDPs and certified program recipients in States without EDPs submit data every six months until the completion of the pilot program on the following:

- For each piece of equipment distributed, its name, serial number, brand and function (*e.g.,* amplifier, Braille embosser), its cost, the type of service with which it is used (*e.g.,* telephone, Internet), and the type of relay service it can access (*e.g.,* TRS, video relay, *etc.*);
- For each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment;
- For each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind;
- The cost, time and any other resources allocated to assessing an individual's equipment need;
- The cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment;
- The cost, time and any other resources allocated to repair and maintenance of equipment;
- The cost, time and any other resources allocated to outreach activities related to the NDBEDP;
- The cost, time and any other resources allocated to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades (*e.g.,* software upgrade; replacement part); and
- Any research and development performed.

28. The Commission seeks comment on its proposal for the collection of the above information, and solicit recommendations on any additional data it should require local distribution programs to submit. For example, should these semi-annual reports also contain proposed best practices for each of the obligations noted above, including which equipment is most effective in terms of usability and reliability for deaf-blind participants? Should programs be required to report on the administrative expenses incurred in participating in this program? Should programs be required to report complaints received on the equipment and appeals on eligibility, as well as other consumer related disputes? The Commission also seeks comment on how long programs should be required to retain electronic records with the above information, as well as what specified period of time—for example, 5 years—is appropriate for the retention of these records.

29. The Commission proposes that certified distribution programs be subject to regular audits by an independent entity to prevent fraud, waste and abuse, and asks what would be an appropriate interval of time for such audits to be conducted. Additionally, the Commission tentatively concludes that equipment distribution programs covered under the NDBEDP not be permitted to accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment. Such arrangements could run counter to the program's purpose, which is to provide equipment that meets each individual's unique needs.

30. Finally, the Commission tentatively proposes that program administrators who submit any data to the Commission certify such data to be true and accurate under penalty of perjury.

Logistics and Division of Responsibilities

31. The Commission proposes to delegate authority to the Consumer and Governmental Affairs Bureau to designate a NDBEDP Program Administrator. This individual would work in collaboration with the TRS Fund Administrator, and be responsible for:

- Identifying, verifying and contacting current State EDPs to notify them of their eligibility for program participation.
- Reviewing program applications and certifying local programs to administer the distribution of equipment in each of the States.
- Serving as the Commission point of contact and overseeing all of the certified distribution programs.
- Overseeing any national training programs.
- Reviewing and evaluating State data for best practices.
- Working with Commission staff to adopt permanent rules for the NDBEDP.

32. The Commission further proposes that the Fund Administrator (as directed by the NDBEDP Program Administrator) have responsibility for:

- Reviewing cost submissions and releasing funds for equipment purchases and authorized associated services.
- Releasing funds for a nationwide training program.
- Releasing funds for a nationwide outreach effort.
- Releasing funds for other purposes, as directed by the Commission.
- Collecting data as needed for delivery to the NDBEDP Program Administrator.

Other Considerations

33. *Advisory Body.* Because of the specialized nature of this program, the Commission seeks comment on the need for a newly created advisory body that could work with the NDBEDP Program Administrator and Fund Administrator to evaluate consumer experiences with the program, assess the program's benefits, explore new technologies, and consider changes to the program's

features. Alternatively, the Commission seeks comment on whether this advisory function can be satisfactorily accomplished by charging one of the following existing advisory bodies to monitor the operations and effectiveness of the NDBEDP: the FCC's Consumer Advisory Committee, whose purpose is to make recommendations to the Commission regarding consumer issues or the Interstate TRS Fund Advisory Council, whose purpose is to monitor TRS cost recovery matters.

34. *Central Repository.* The Commission seeks comments on use of a future clearinghouse for the purpose of a central repository, including ways in which the NDBEDP and clearinghouse could work together to inform the deaf-blind public about the local equipment distribution programs available to them.

35. *Whistleblower Provision.* The Commission recognizes that the NDBEDP involves the use and management of funds which may, like any funding program, be susceptible to waste, abuse and fraud. As part of the Commission's obligation to ensure that this fund is being used for its targeted consumers, it proposes to adopt a specific whistleblower protection rule for the employees of State and local programs authorized to distribute equipment under the NDBEDP.

36. *NDBEDP as a Supplemental Funding Source.* When it is established, the NDBEDP will be one of several governmental programs that either authorize or direct the distribution of specialized CPE to the deaf-blind community. The Commission proposes that where existing Federal or State programs already direct or fund equipment distribution for the deaf-blind community, or are required to provide equipment to certain eligible deaf-blind persons, the NDBEDP work along side these programs, to serve as a supplement to, rather than as a replacement for, their distribution efforts. In this manner, the Commission will be able to maximize the availability of these funds for those who are unable to qualify for such other programs. The Commission seeks comment on this proposal. In addition, the Commission seeks comment on the need for safeguards to ensure that individuals seeking equipment under the NDBEDP do not "double dip" into multiple equipment distribution programs for the same devices. For example, as part of the application process, should the Commission require that individual applicants be required to certify that they have not otherwise received the same equipment from other Federal and State program sources? Given that many people who are deaf-blind may require multiple devices to achieve the communications accessibility intended by Congress under the CVAA, how should the Commission define such "double dipping?" Finally, given the Commission's overall goal to distribute end-user equipment under this program to individuals who have not been able to otherwise receive such equipment, should the Commission adopt a rule that disqualifies from participation, during this pilot program, those individuals who are eligible under or have already received equipment from these other equipment distribution programs? The Commission seeks comment on whether such an approach during our pilot program would assist in reaching portions of this population that have never been served by any equipment distribution source.

Initial Regulatory Flexibility Analysis

37. The Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603 (b), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking 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 that: (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), 15 U.S.C. 632.

38. In document FCC 11–3, the Commission seeks comment on its proposal to implement section 105 of The Twenty-First Century Communications and Video Accessibility Act of 2010 (Communications Accessibility Act or CVAA), signed into law by President Obama on October 8, 2010, that requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century. Section 105 of this law directs the Commission to establish rules within six months of enactment of the new statute that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind. The goal of this NDBEDP is to make equipment used with telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind. This item proposes rules to create an effective and efficient process governing the distribution of specialized CPE to enhance and promote access to telecommunications and related communications services by low-income individuals who are deaf-blind.

39. Specifically, the Commission seeks comment on a proposed definition of individuals who are deaf-blind for purposes of eligibility in the NDBEDP, proposed criteria for verifying a person's disability, proposed income criteria, and other eligibility considerations. In addition, the Commission seeks comment on the scope of specialized CPE covered under this program; and whether any portion of the funding should be allocated to research and development, individualized assessment of communication needs, installation and training, maintenance, warranties, repairs, outreach, or education. The Commission seeks comment on the appropriate allocation of funding, and on a proposal for specific reporting requirements to be imposed on recipients of NDBEDP funding. The Commission also seeks comment on the logistics of administering the program. Finally, the Commission seeks comment on several other considerations including the establishment of: an advisory body to provide input on the program; a central repository of information; whistleblower protections for individuals who provide information on fraud, waste and abuse; and a vehicle for the NDBEDP to be used as a supplemental funding source to other Federal programs.

40. The Commission proposes to require that recipients of NDBEDP funding seeking to distribute specialized CPE and receive compensation for the distribution of such equipment under the NDBEDP pilot program first receive certification from the Commission. The Commission proposes the following factors to be considered in determining whether to grant certification: (i) Expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population; (ii) adequate staffing and facilities to administer the program; (iii) experience with the distribution of specialized CPE, especially to people who are deaf-blind; (iv) the ability to install specialized CPE covered under the program and to train users on how

to use that equipment; (v) the ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and (vi) the ability to distribute equipment and related services to eligible individuals throughout the state (including to remote areas), either directly or in coordination with other local programs.

41. In addition, the Commission proposes to require that each program certified under the NDBEDP pilot program must: (1) Distribute specialized customer premises equipment needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible to individuals who are deaf-blind; (2) verify that each individual applying to the NDBEDP pilot program for equipment meets the definition of an individual who is deaf-blind contained at § 64.610(b) of the Commission's rules; and (3) verify that each individual applying to the NDBEDP pilot program for equipment meets the income eligibility requirements established by the Commission. The Commission proposes to allow each program certified under the NDBEDP pilot program to: (1) Use a portion of the funds received under the NDBEDP pilot program for individual needs assessments; (2) use a portion of the funds received under the NDBEDP pilot program for installation of equipment and consumer training; and (3) use a portion of the funds received under the NDBEDP pilot program for maintenance, repairs, and warranties on equipment distributed to consumers.

42. Finally, the Commission proposes to require each program certified under the NDBEDP pilot program to submit data every six months until the completion of the pilot program on the following: (1) For each piece of equipment distributed, its name, serial number, brand and function, its cost, the type of service with which it is used, and the type of relay service it can access; (2) for each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment; (3) for each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind; (4) the cost, time and any other resources allocated to assessing an individual's equipment needs; (5) the cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment; (6) the cost, time and any other resources allocated to repair and maintenance of equipment; (7) the cost, time and any other resources allocated to outreach activities related to the NDBEDP; and (8) the cost, time, and any other allocation related to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades.

43. With regard to whether a *substantial number* of small entities may be economically impacted by the requirements proposed in document FCC 11–3 the Commission notes that, a substantial number of small entities will be likely be affected; however, the economic impact on such entities will be de minimis. Most participating entities are likely meet the definition of a small entity as a "small organization," or a "small governmental jurisdiction." Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. Finally, 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." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small. In addition, it is possible that some entities that fall under the category of "advanced communications services" may be participants in the NDBEDP pilot program. Section 101 of Title I of the Act, defines "advanced communications services" to mean (A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service. *See* Pub. L. 111–260, 101(1) (amending Section 3 of the Communications Act). While the Commission's rules already define interconnected VoIP service, the Act provides new definitions for non-interconnected VoIP service, "electronic messaging service" and "interoperable video conferencing service."

44. While the Congressional mandate has led us to list the above entities as the ones that in all reasonable likelihood will function as EDPs, there exists the possibility that our list herein of entities that will foreseeably function as EDPs may not be complete and/or may subsequently include entities not listed above. This includes entities which may not fit into traditional categories currently under the Commission's jurisdiction. However, as noted above, section 105 of the CVAA gives the Commission broad authority to establish rules that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind.

45. In addition, given that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would be entitled to receive prompt reimbursement for their reasonable costs of participation and compliance, the Commission concludes that document FCC 11–3, if adopted, will not have a significant economic impact on these small entities.

46. Therefore, the Commission certifies that the proposals in document FCC 11–3, if adopted, will not have a significant economic impact on a substantial number of small entities.

47. The Commission will send a copy of document FCC 11–3, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and The Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111–260, that document FCC 11–3 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11–3, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 619, unless otherwise noted.

Subpart F—Telecomunications Relay Services ABD Related Customer Premises Equipment for Persons with Disabilities

2. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), and 619.

3. Section 64.610 is added to subpart F to read as follows:

§ 64.610 Establishment of a National Deaf-Blind Equipment Distribution Pilot Program.

(a) *Certification to receive funding from the NDBEDP.* All programs seeking to distribute specialized customer premises equipment and receive compensation for the distribution of such equipment from the Interstate TRS Fund, pursuant to the National Deaf-Blind Equipment Distribution Pilot Program (NDBEDP pilot), must first receive certification from the Commission.

(1) Any State with an established equipment distribution program (EDP), may have such EDP apply for certification as the sole authorized entity for the State to receive compensation for the distribution of equipment to the deaf-blind residents of that State.

(2) In States without an EDP, States that have an EDP that chooses not to apply for certification or States that have an EDP that is not deemed eligible to participate in the NDBEDP by the Commission under this section, other public programs, including, but not limited to, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind; or private entities, including but not limited to, organizational affiliates, independent living centers, or private educational facilities, may apply to the Commission for certification to distribute the specialized CPE covered by the NDBEDP.

(3) The Commission shall review applications and determine whether to grant certification based on the following factors:

(i) Expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population;

(ii) Adequate staffing and facilities to administer the program;

(iii) Experience with the distribution of specialized CPE, especially to people who are deaf-blind;

(iv) The ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and

(v) The ability to distribute equipment and related services to eligible individuals throughout the State (including to remote areas), either directly or in coordination with other local programs.

(b) *Definition. For purposes of this section, the following definitions shall apply:*

(1) *Individual who is deaf-blind.* Any person: (i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions;

(ii) Has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in paragraphs (b)(1)(i) and (b)(1)(ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(2) *Individuals claiming eligibility.* Individuals claiming eligibility under the NDBEDP are permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability.

(i) Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician.

(ii) Any of these professionals must be able to attest to the applicant's physical disability (as defined above), and, in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss.

(3) *Low-income.* 400 percent of the Federal Poverty Guidelines as defined at 42 U.S.C. 9902(2) or enrolled in for one of the following subsidy programs: Federal Public Housing Assistance (FPHA) or Section 8; Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; Low Income Home Energy Assistance Program (LIHEAP); Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income (SSI); or Temporary Assistance for Needy Families (TANF).

(c) *Verification of disability.* Individuals claiming eligibility under the NDBEDP are permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability.

(1) Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician.

(2) Any of these professionals must be able to attest to the applicant's physical disability, and, in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss.

(d) *Prohibition against requiring employment.* No EDP or other program authorized to distribute equipment under the NDBEDP may impose as a qualification for eligibility in this program the extent to which a person who is deaf-blind is employed or actively seeking employment.

(e) *Equipment distribution and related services.* Each program certified under the NDBEDP pilot program must:

(1) Distribute specialized customer premises equipment needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;

(2) Verify that each individual applying to the NDBEDP pilot program for equipment meets the definition of an individual who is deaf-blind contained at § 64.610(b); and

(3) Verify that each individual applying to the NDBEDP pilot program

for equipment meets the income eligibility requirements established by the Commission.

(f) Each program certified under the NDBEDP pilot program may:

(1) Use a portion of the funds received under the NDBEDP pilot program for individual needs assessments;

(2) Use a portion of the funds received under the NDBEDP pilot program for installation of equipment and consumer training; and

(3) Use a portion of the funds received under the NDBEDP pilot program for maintenance, repairs, and warranties on equipment distributed to consumers.

(g) *Reporting requirements.* Each program certified under the NDBEDP pilot program must submit data every six months until the completion of the pilot program on the following:

(1) For each piece of equipment distributed, its name, serial number, brand and function, its cost, the type of service with which it is used, and the type of relay service it can access;

(2) For each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment;

(3) For each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind;

(4) The cost, time and any other resources allocated to assessing an individual's equipment needs;

(5) The cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment;

(6) The cost, time and any other resources allocated to repair and maintenance of equipment;

(7) The cost, time and any other resources allocated to outreach activities related to the NDBEDP; and

(8) The cost, time and any other resources allocated to the need for upgrading the distributed equipment during the pilot program, along with the nature of such upgrades.

(h) *Administration of the program.* The Consumer and Governmental Affairs Bureau shall designate the NDBEDP Program Administrator.

(1) This Commission official will work in collaboration with the TRS Fund Administrator, and be responsible for:

(i) Identifying, verifying and contacting current State EDPs to notify them of their eligibility for program participation;

(ii) Reviewing program applications and certifying local programs to administer the distribution of equipment in each of the States;

(iii) Serving as the Commission point of contact and overseeing all of the certified distribution programs;

(iv) Overseeing training programs established under this program;

(v) Reviewing and evaluating State data for best practices; and

(vi) Working with Commission staff to adopt permanent rules for the NDBEDP.

(2) The Fund Administrator, as directed by the NDBEDP Program Administrator, shall have responsibility for:

(i) Reviewing cost submissions and releasing funds for equipment purchases and authorized associated services;

(ii) Releasing funds for a nationwide training program;

(iii) Releasing funds for a nationwide outreach effort;

(iv) Releasing funds for other purposes, as requested by the Commission; and

(v) Collecting data as needed for delivery to the NDBEDP Program Administrator.

(i) *Payments to certified NDBEDP participants.* Payments to certified program participants under the NDBEDP shall be made in connection with equipment that has been distributed to eligible individuals, up to a State's funding allotment under this program.

(j) *Expiration of rules.* These rules expire at the termination of the pilot program.

[FR Doc. 2011–1405 Filed 1–26–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2009–0303 (HM–213D)]

RIN 2137–AE53

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA is proposing to amend the Hazardous Materials Regulations to prohibit the transportation of flammable liquids in unprotected external product piping on DOT specification cargo tank motor vehicles. If adopted as proposed, these amendments will reduce fatalities and injuries that result from accidents during transportation involving the release of flammable liquid from unprotected external product piping.

DATES: Written comments should be submitted on or before March 28, 2011.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2009–0303 (HM–213D) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Dirk Der Kinderen, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–8553; or Leonard Majors, Engineering and Research Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366–4545.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statement of the Problem

In final rules published under Docket HM–183, PHMSA's predecessor agency (Research and Special Programs Administration—RSPA) amended the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to prohibit the transportation of Division 5.1 (oxidizing), 5.2 (organic peroxides), 6.1 (toxic), and Class 8 (corrosive to skin only) hazardous materials in external product piping of a DOT specification cargo tank motor vehicle (CTMV), unless the vehicle is equipped with bottom damage protection devices. See 49 CFR 173.33(e), adopted at 54 FR 24982, 25005 (June 12, 1989), and 55 FR 37028, 37049 (Sept. 7, 1990). The external product piping refers to loading or unloading lines located on the bottom portion of cargo tanks that are exposed to vehicle collision. The term "wetlines" is commonly used in reference to external product piping when it contains product, specifically, hazardous material (see § 171.8 of the HMR) transported as cargo and is used throughout this notice of proposed rulemaking (NPRM) to describe the practice of transporting hazardous material in external product piping.

As explained in the June 12, 1989 final rule, the prohibition against wetlines was not applied to flammable liquids, such as gasoline, because "[a]ll motor fuels must be metered for tax purposes" and no method existed "to drain product from the cargo tank piping back into the loading facility and maintain proper accounting for tax purposes." 54 FR 24937. Metering of motor fuels for tax purposes continues to date and a method to drain these fuels from cargo tank loading lines while still maintaining proper accounting has yet to be developed due to the cost considerations of installation of a process at loading racks capable of returning the product remaining in cargo tank loading lines to the loading facility or receiving the product as waste. In the September 7, 1990 final rule, we reiterated that the prohibition of wetlines was applicable only to DOT specification cargo tanks used to transport liquid hazardous materials and clarified that the prohibition in § 173.33(e) does not apply to liquid hazardous materials authorized for transportation in non-specification CTMVs. We also stated that "we strongly encourage the petroleum industry to consider the risk it accepts in operating cargo tank motor vehicles over the highway with hazardous materials retained in the piping and that the hazardous materials industry consider and recommend possible alternatives to eliminate this risk in the most cost-effective manner." 55 FR 37030.

Thus, it remains that there is a segment of the CTMV population that transports flammable liquid material that is not subject to prohibition of wetlines unless the vehicle is equipped with bottom damage protection devices. We believe this continues to be an important safety concern. These CTMVs continue to be involved in motor vehicle accidents resulting loss of life attributable to wetlines (see *Section II Incident Analysis*). Although no catastrophic incident has occurred in the recent past, PHMSA and the National Transportation Safety Board (NTSB) contend that incidents similar to the Yonkers, NY incident described in NTSB Recommendation (H–98–27; discussed in detail below) is likely to occur in the future. We base our concerns on the population of CTMVs involved in flammable liquid service, the daily volume of traffic on our Nation's roadways, and the possibility the average motor vehicle occupancy will increase as gasoline prices increase.[1] Outside of existing conspicuity and outreach initiatives, there is little that PHMSA can do to prevent a collision between a motor vehicle and the wetlines of a CTMV. However, PHMSA can implement additional measures to ensure that DOT specification CTMVs are utilized and designed in a manner that fully considers the likelihood and potential consequences of a wetlines incident and the hazards that such an incident poses to the vehicle driver and traveling public.

B. National Transportation Safety Board Recommendation

The National Transportation Safety Board (NTSB) is an independent Federal accident investigation agency. Since its creation in 1967, the NTSB has been determining the probable cause of transportation accidents and formulating safety recommendations to improve transportation safety. On May 18, 1998, the NTSB issued safety recommendation H–98–27 recommending that DOT:

> Prohibit the carrying of hazardous materials in external piping of cargo tanks, such as loading lines, that may be vulnerable to failure in an accident.

This recommendation resulted from an NTSB investigation of an accident occurring on October 9, 1997, in Yonkers, New York, that involved a passenger vehicle and a CTMV containing 8,800 gallons of gasoline. In its investigation report, the NTSB stated that the immediate result of the accident was a fire inside and below the car and that the fuel for the initial fire was the gasoline released from the cargo tank's loading lines (i.e., the wetlines) during impact. The fire was then fed by gasoline from the cargo tank's compartments. The NTSB concluded that, had the loading lines been empty, the fire likely would not have occurred. Based on its investigation, the NTSB identified the operation of a CTMV with unprotected loading lines carrying hazardous materials as a serious safety issue. NTSB recommendations are included among the actions that drive PHMSA to initiate rulemakings. The NTSB Recommendation (H–98–27) and the accident report (NTSB Report Number HAR98–02) can be reviewed at *http://www.ntsb.gov/*.

NTSB continues to recommend the prohibition of what it considers the unsafe practice of transporting flammable liquids in wetlines. In recent correspondence with PHMSA, the NTSB expressed disappointment in our efforts to address the intent of their recommendation including the withdrawal of our December 30, 2004 NPRM (HM–213B; 69 FR 78375) and restated their concern by highlighting the results of an accident report (NTSB Report Number HZB–09–01) regarding a motor vehicle accident involving a CTMV transporting gasoline and a passenger vehicle that occurred July 1, 2009. The NTSB determined that the vehicle struck a wetline causing the release of 13 gallons which resulted in a fire that caused the death of the driver of the passenger vehicle. The NTSB noted that this accident illustrates why it believes PHMSA should prohibit the practice of transporting flammable liquids in wetlines. The NTSB concluded in its correspondence that based on the age of the recommendation, the lack of measurable progress by PHMSA to satisfy the intent of the recommendation, and that this unresolved issue contributed to the severity of another accident, their recommendation was downgraded from "Open-Acceptable Response" to "Open-Unacceptable Response." The NTSB indicated that it would be willing to reconsider its position on the recommendation pending the publication of a rulemaking that prohibits the transportation of flammable liquids in wetlines.

[1] Federal Highway Administration, *Summary of Travel Trends: 2001 National Household Travel Survey.* Dec 2004. *http://nhts.ornl.gov/2001/pub/STT.pdf.*

C. Docket No. HM–213B

On February 10, 2003, PHMSA published an advance notice of proposed rulemaking (ANPRM; 68 FR 6689) to solicit comments and information regarding methods to reduce the safety hazard associated with the retention of lading in unprotected wetlines. We asked commenters to address a number of issues to assist in making a determination as to whether regulatory changes could be affected, including the state of technological development, practical alternatives to protect the wetlines or eliminate the safety problem, the effectiveness of measures such as increased conspicuity or side guards, and industry practices to minimize the safety problem.

Based on comments received in response to the February 10, 2003, ANPRM and PHMSA assessment of the safety issues, on December 30, 2004, the agency published a notice of proposed rulemaking (NPRM; 69 FR 78375) proposing to amend the HMR to prohibit the carriage of flammable liquids in wetlines on a DOT specification cargo tank, unless the CTMV was equipped with bottom damage protection devices. PHMSA proposed a quantity limit of one liter or less in each pipe, but did not propose a specific method for achieving this standard. The NPRM included an exception from the proposed requirements for truck-mounted (*e.g.,* straight truck) DOT specification CTMVs. PHMSA proposed to require compliance with the proposed changes two years after the effective date of a final rule to provide time for planning, developing, and testing damage protection systems or systems designed to remove hazardous materials from product piping, or for redesigning CTMVs to eliminate external product piping altogether; and proposed to permit CTMV operators five years to phase in requirements applicable to existing CTMVs to minimize the costs of down time for installation of equipment or redesigns by providing an opportunity to retrofit an existing CTMV during the scheduled requalification time because each specification CTMV must undergo periodic hydrostatic pressure testing every five years.

Based on comments received in response to the notices, the agency reevaluated data and information concerning potential costs and benefits of regulatory alternatives to ensure that a final rule prohibiting the transportation of flammable liquids in unprotected wetlines would be cost-effective. After extensive analysis, PHMSA concluded that the quantifiable benefits accruing from such a prohibition would not justify corresponding costs. Accordingly, PHMSA withdrew the NPRM on June 7, 2006 (71 FR 32909).

TABLE 1—SUMMARY OF HM–213B RULEMAKING ACTIONS

Rulemaking action	Publication date	Purpose
Advanced Notice of Proposed Rulemaking.	February 10, 2003	Solicit comments and information regarding methods to reduce the safety risks associated with the retention of flammable liquids in unprotected wetlines.
Notice of Proposed Rulemaking	December 30, 2004	Propose amendments to prohibit the carriage of flammable liquids in wetlines on a DOT specification cargo tank, unless the CTMV was equipped with bottom damage protection devices.
Notice of Withdrawal	June 7, 2006	Withdraw rulemaking proposal after agency review of comments received and cost-benefit analysis.

In the June 7, 2006, notice of withdrawal, PHMSA made it clear that the NPRM was being withdrawn on the basis of public comments and additional data and analysis. PHMSA concluded that further regulation would not produce the level of benefits we originally expected and that the quantifiable benefits of proposed regulatory approaches would not justify the corresponding costs. As indicated in the withdrawal, PHMSA developed and implemented an outreach program to educate the industry, first responder community, and the public about potential risks associated with unprotected wetlines on these vehicles. PHMSA continued to collect data and other information in order to address its concerns further if warranted. Based on the number of wetlines incidents that continue to occur as well as the open NTSB recommendation, as well as concerns regarding the possibility of a low probability high-consequence event associated with a wetlines incident, PHMSA has reopened a wetlines rulemaking action.

In the withdrawal notice, we noted and commended the voluntary efforts taken by the flammable liquid industry to limit the safety hazard associated with the transportation of flammable liquids in unprotected wetlines. We indicated that one large gasoline distributor has installed purging systems on its CTMVs. In addition, another large gasoline distributor has installed damage protection equipment on its CTMVs which could help to mitigate the consequences of a collision with a motor vehicle.

II. Incident Analysis

In 2009, PHMSA reviewed approximately 6,800 incidents involving CTMVs transporting flammable or combustible liquids that occurred during the 10-year period from 1999–2009. PHMSA identified 172 incidents during this period in which wetlines were determined to be damaged and/or ruptured. A total of 18 of these incidents involved fires. Of these, eight incidents resulted in a fatality or injury. More specifically, four incidents resulted in five fatalities and four incidents resulted in four injuries directly attributable to a wetline release—that is, the fatalities and injuries resulted from a fire rather than blunt force trauma or some other event that would have occurred whether or not the wetline was damaged. Incident reports submitted to PHMSA can be reviewed at PHMSA's Hazmat Safety Community Web site at: *http://phmsa.dot.gov/hazmat/incident-report*.

PHMSA continues to be concerned about the potential for serious consequences resulting from an incident involving the collision of a passenger vehicle and the wetlines on a CTMV transporting a flammable liquid such as gasoline. Because the external piping used to load and unload cargo tanks in flammable liquid fuel service is located on the underside (*i.e.,* the belly) of a cargo tank, without protection, the piping remains exposed to a collision. The Yonkers incident investigated by the NTSB is a primary example of one such incident. As noted above, the incident involved a CTMV loaded with 8,800 gallons of gasoline. The CTMV was traveling under an overpass of the New York State Thruway (Thruway)

when it was struck by a passenger vehicle. The vehicle hit the right side of the cargo tank in the area of the cargo tank housing the tank's wetlines, damaging the wetlines and releasing the gasoline they contained. The ensuing fire destroyed both vehicles and the overpass of the Thruway; the Thruway remained closed for approximately six months. The driver of the passenger vehicle was killed; the driver of the truck was not injured. The damage was estimated at $7 million. As serious as this incident was, under different circumstances the consequences could have been even more severe—if the incident had occurred during rush hour, for example, or if there had been more than one occupant of the passenger vehicle. We believe the risks associated with the carriage of flammable liquids in wetlines, particularly the potential for multiple fatalities and injuries resulting from the collision of a passenger vehicle with the wetlines on a CTMV, warrant renewed rulemaking action.

III. Regulatory Evaluation

This NPRM is based on and supported by cost-benefit conclusions presented in the regulatory evaluation. The evaluation is available for review in the docket to this rulemaking. The evaluation of costs and benefits for this proposed rulemaking relies on a number of different assumptions that are independent—*i.e.,* any change in unit cost assumptions will not affect the calculation of benefits, and vice versa. In addition, our cost estimates are based on a complete set of direct and indirect costs, most based on consensus estimates with stakeholders. In contrast, our benefit calculations are based on incidents occurring over the past ten years and the estimated consequences of a catastrophic event spread out over 20 years. As a result of our decision to spread the catastrophic event benefits over 20 years, PHMSA considers the values for estimated benefits to be conservative as evidenced through sensitivity analysis (see *Section V Executive Order 12866 and DOT Regulatory Policies and Procedures*). We invite comment on our selection and determination of assumptions and calculations presented in the regulatory evaluation.

IV. Proposals in this NPRM

In this NPRM, PHMSA is proposing to prohibit the transportation of flammable liquids in exposed external product piping unless the CTMV is equipped with bottom damage protection that conforms to the requirements of § 178.337–10 or § 178.345–8(b)(1), as appropriate.

Since external product piping configurations on CTMVs transporting gasoline or other flammable liquids may possibly contain minimal amounts product even by design or when drained or purged, we are proposing to allow a residue quantity of no more than one liter (0.26 gallon or 33 ounces) to remain in each pipe. This allowance is a performance standard based on vehicle design. We assume that there much less of a hazard associated with this residual amount of flammable material and invite comment on this threshold quantity.

Operators of CTMVs achieving this performance standard would not be subject to the bottom damage protection requirements. We believe that compliance with this standard could be monitored by field operations personnel observing loading practices at a terminal or by viewing site gauges on piping when a CTMV is in transportation. We assume that there will be no additional enforcement costs associated with this monitoring and seek comment on the appropriateness of this assumption as well as the plausibility of enforcing this performance standard.

We are not proposing a specific method for achieving this residue standard but rather permitting latitude in developing measures to achieve compliance with either the damage protection requirements or prohibition of flammable liquid in wetlines to the one liter residue level. For example, an operator may elect to design external loading lines such that the quantity that remains is less than one liter per pipe. However, an operator may choose not to achieve this performance standard and continue the practice of wetlines by installing bottom damage protection on each CTMV. We invite comment on methods that can be used to achieve this performance standard and the costs associated with those methods.

Combustible Liquids. As proposed in this NPRM, the wetlines prohibition would not apply to a material classed as a combustible liquid or to a Class 3 flammable liquid material reclassed as a combustible liquid (see § 172.120(b) of the HMR). Because of their higher flashpoints, combustible liquids pose a lesser hazard than flammable liquids and are afforded a number of exceptions throughout the HMR. Moreover, our review of wetlines incidents occurring over the ten-year review of incidents included incidents involving transport of both combustible liquids and flammable liquids that could have been reclassed as combustible liquids. None of the wetlines incidents involving this class of materials resulted in a fatality or an injury. We invite comments concerning whether combustible liquids should be subject to the wetlines prohibition.

Truck-Mounted DOT Specification Cargo Tank Motor Vehicles. In this NPRM, PHMSA is proposing to except truck-mounted DOT Specification CTMVs (i.e., straight trucks) from the prohibition of wetlines containing flammable liquids. Straight trucks are designed and constructed with engine, body, and cargo tank permanently mounted to the same chassis. Based on the protective features afforded by their chassis and running gear, straight trucks present less of a hazard than most trailer and semi-trailer CTMVs because the external product piping is not exposed to impact from a vehicle collision in the same manner. Under this proposal, components of the CTMV framework such as chassis rails and cross-members, suspension components, structural mounting members, or any other device that substantially protects wetlines from the impact forces of another motor vehicle are expected to provide adequate bottom damage protection. We invite comment on whether this exception for straight trucks provides an acceptable level of safety, whether prohibiting flammable liquids in wetlines on straight trucks should be considered, or if a quantifiable design or performance standard should be developed for these types of CTMVs. In addition, we invite comment on whether a Design Certifying Engineer (see § 171.8 of the HMR) should be required for determination whether straight trucks are adequately protected as part of the design certification process that is required for all DOT specification CTMVs. We invite comment on the cost of implementing a requirement for such a certification process.

Transition Period and Compliance. In this NPRM, PHMSA is proposing that the changes become effective two years after publication of the final rule. The two-year transition period provides time for planning, developing, and testing damage protection systems or systems designed to remove hazardous materials from product piping, or for redesigning CTMVs. Following this two-year deferral period, each newly manufactured DOT Specification CTMV designed with external product piping would be subject to the requirements and each existing CTMV would be required to comply with the prohibition within ten years. Acknowledging that existing CTMVs would most likely have to be placed out of service to implement a measure to comply with the

requirements, we are instituting a ten-year compliance period to accommodate this burden in hopes that this would allow sufficient time to schedule CTMVs to be out of service. We would expect that work on retrofits for existing CTMVs could be conducted at the same time as the periodic hydrostatic pressure tests that occur during the compliance period. The two-year transition period and ten-year compliance period are needed to balance the economic and operational impacts on CTMV operators and the safety enhancements from implementation of this requirement. We invite comment on the proposed two-year transition period as well as the extended ten-year compliance period for existing CTMVs. We also invite comment regarding the material, engineering, and labor costs associated retrofitting a cargo tank to comply with the proposed requirements.

Conforming amendment. For consistency in the application of the exception from the prohibition of wetlines for residue amounts of hazardous materials as adopted at 54 FR 24982, 25005 (June 12, 1989) and 55 FR 37028, 37049 (Sept. 7, 1990), PHMSA is proposing to revise the current exception in § 173.33(e) for hazardous materials other than flammable liquids to also specify an allowance for a residue quantity of one liter to remain in each line.

TABLE 2—SUMMARY OF PROPOSED AMENDMENTS

Proposed requirement:	Prohibit carriage of flammable liquid in wetlines of a DOT specification cargo tank unless the CTMV is equipped with bottom damage protection devices.
Compliance date:	Two years from date of publication of final rule. Existing CTMVs have an additional ten years to come into compliance.
Exceptions to the proposed requirement:	Truck- mounted CTMVs (i.e., straight trucks).
CTMVs containing combustible liquids including reclassed combustibles.	CTMVs with wetlines designed, drained or purged so that the quantity of flammable liquid remaining does not exceed 1 L.

V. Regulatory Analyses and Notices

A. Statutory Authority for This Rulemaking

This rulemaking is issued under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. The proposed rule is also a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

To evaluate the benefits and costs of the proposal to prohibit the carriage of flammable liquids in wetlines, we identified several technologies that would permit operators to reduce the risk from wetlines containing flammable liquids involved in a motor vehicle accident. The technologies included engineering redesigns such as shorter loading lines or relocating of loading lines such that the CTMV chassis provides protection from damage, or other alternatives such as installation of a fire suppression system. The technology selected for this final analysis is a manual purging system that can be installed without welding. This system is the lowest-cost system currently available that will allow for compliance with the performance standard of the proposed requirement. We invite comment to provide information on alternative technologies as well as the cost and benefits of such technologies to comply with the proposed requirement. A purging system evacuates the wetlines by forcing the liquid material out of the wetlines and into the cargo tank body. After loading of a cargo tank is completed and the main cargo compartment valves are closed, the system introduces compressed air from an auxiliary tank through an air filter and regulator into the lines. The purge can be completed after the CTMV leaves the loading racks and will not create additional standing time for the vehicle.

The regulatory evaluation assumes a total of 27,000 CTMVs would be affected by a rule, and the cost to install a manual, non-welded purging system would be $2,585 per CTMV (the cost numbers are based on information provided by equipment vendors). We also assumed the average service life for a CTMV in flammable liquid service is 20 years; thus, we assume on average five percent of the fleet would be retired each year. We invite comment on our assumption of the population of CTMVs in flammable liquid service that would be affected by this rulemaking as well as the assumed service life.

Benefits include avoided injuries and property damage attributable to wetlines incidents and avoided traffic delays, evacuations, emergency response, and environmental damage. For the ten-year period from January 1, 1999 through December 31, 2008, based on a review of incident narratives provided within each incident report including any follow-up communication with persons submitting the report for further clarification of the narrative, we identified 172 incidents in which wetlines were damaged and/or ruptured and a release occurred. A total of 18 of these incidents involved fires. These incidents resulted in five fatalities, four injuries, and millions of dollars in property damage.

We considered five alternatives. For purposes of this proposed rulemaking, newly constructed is defined as any new construction of a CTMV after the 2-year transition period following the effective date of the rulemaking:

(1) Do nothing;

(2) Prohibit the carriage of flammable liquids in wetlines on newly constructed and existing CTMVs. Existing CTMVs must be compliant in five years.

(3) Prohibit the carriage of flammable liquids in wetlines on newly constructed and existing CTMVs. Existing CTMVs must be compliant in ten years.

(4) Prohibit the carriage of flammable liquids in wetlines on newly constructed and existing CTMVs. Existing CTMVs must be compliant in fifteen years.

(5) Prohibit the carriage of flammable liquids in wetlines on newly constructed and existing CTMVs. Existing CTMVs must be compliant in twenty years. Given the estimated 20-year service life of CTMVs, this alternative implies that only newly constructed cargo tanks would be subject to the prohibition.

The present value benefits and costs for the compliance alternatives are provided below at 3% and 7% discount rates. A benefit-cost ratio of greater than 1.0 indicates a cost beneficial rulemaking. At the 3% discount rate, the ratios are just under 1.0 for all four alternatives.

TABLE 3—PRESENT VALUE BENEFITS AND COSTS OF RULE

Alternative	P.V. Total benefits (3%)	P.V. Total costs (3%)	Benefit-cost ratio (3%)	P.V. Total benefits (7%)	P.V. Total costs (7%)	Benefit-cost ratio (7%)
(1) Compliance within 20 Years	$51,644,863	$52,484,501	0.98	$29,759,689	$34,334,871	0.87
(2) Compliance within 15 Years	64,658,075	66,467,692	0.97	37,762,060	44,138,243	0.86
(3) Compliance within 10 Years	78,965,221	82,419,898	0.96	47,589,156	56,967,584	0.84
(4) Compliance within 5 Years	94,714,950	100,635,691	0.94	59,741,517	73,886,787	0.81

In addition to identifying the benefits and costs, we also developed corresponding sensitivity values to see how sensitive the analysis to changes in data used to calculate the ratios. The series of sensitivity analyses developed provide ranges of benefits and costs for each alternative. As previously indicated, in our base case, the benefit-cost ratios are marginally less than 1.0. However, adjustment of data points for the sensitivity analyses dramatically shifts the averages above 1.0 in all cases, reflecting the relative confidence between benefits and costs. For example, keeping costs the same as the baseline and increasing the number of fatalities per incident to 3 compared to the baseline of 1.6, and raising other (non-casualty) reported damages and associated damages by 10% increases the benefit-cost ratio to 1.6. For a complete discussion of the sensitivity analysis, please review the regulatory evaluation available in the docket to this rulemaking.

A summary of the sensitivity analysis is provided below in Table 4. High and low values are identified at both 3% and 7% discount rates.

TABLE 4—SENSITIVITY VALUES OF BENEFIT AND COST FACTORS

	Benefit		Cost		BCR		Net benefits	
	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH
3%								
TOTAL:								
20 Yrs	$51,644,863	$76,148,563	$44,489,385	$57,732,951	0.89	1.71	($6M)	$32M
15 Yrs	64,658,075	95,336,093	56,389,062	73,114,461	0.88	1.69	(8M)	39M
10 Yrs	78,965,221	116,431,484	69,997,980	90,661,888	0.87	1.66	(12M)	46M
5 Yrs	94,714,950	139,653,913	85,574,656	110,699,260	0.86	1.63	(16M)	54M
7%								
TOTAL:								
20 Yrs	29,759,689	43,879,631	29,355,848	37,768,359	0.79	1.49	(8M)	15M
15 Yrs	37,762,060	55,678,849	37,768,477	48,552,068	0.78	1.47	(11M)	18M
10 Yrs	47,589,156	70,168,563	48,818,082	62,664,342	0.76	1.44	(15M)	21M
5 Yrs	59,741,517	88,086,798	63,440,597	81,275,466	0.74	1.39	(22M)	25M

We selected alternative 3 for which the benefit-cost ratio is 0.96 (discounted at 3%). Our analysis is based on estimates in evaluating benefits and costs. Both costs and benefits rely on different assumptions that are independent—i.e., any change in unit cost assumptions will not affect the calculation of benefits, and vice versa. Our cost estimates are based on a complete set of direct and indirect costs. In contrast, our benefit calculations are based on incidents occurring over the past ten years and the estimated consequences of a far less-likely catastrophic event spread out over 20 years. Although serious wetlines incidents occurred before and after the study period, PHMSA believes that this ten-year period is more representative of events likely to occur over the next ten years. To account for the uncertainty in the analysis, we conducted a series of sensitivity analyses. This resulted in ranges of costs and benefits for each alternative we evaluated. For this proposal, the benefit-cost ratios range from 0.87 to 1.66 (discounted at 3%) for the 10-year compliance period for existing CTMVs. Because of the uncertainties inherent in calculating the overall benefits that would accrue and the potential for a wetlines incident to result in catastrophic consequences, we are confident that the costs associated with the proposed requirement will be more than offset by resulting benefits not quantified in this analysis, such as long-term environmental remediation and litigation costs avoided.

C. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”), and the President’s memorandum on “Preemption” is published in the **Federal Register** on May 22, 2009 (74 FR 24693). This NPRM would preempt State, local and Indian tribe requirements, but does not propose any regulation that has direct effects on the States, the relationship between the

national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. We invite State and local governments and Indian tribes to comment on the effect that adoption of proposed requirements may have on safety or environmental protection programs which we have not considered.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain subjects. These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This NPRM addresses covered subject No. 5 and would preempt any State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption will be 90 days after the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Polices

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

PHMSA is proposing this regulatory action because flammable liquids transported in wetlines continue to be involved in motor vehicle accidents and contribute to the fatality, injury, and damage to persons and property involved in an accident. The objective of this proposed rulemaking is to prohibit the transport of flammable liquids in wetlines unless protected against damage by bottom damage protection devices. This regulatory action is being proposed under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. PHMSA does not have definitive data on the number of small entities to which this proposed regulatory action would apply but a cursory review of industries and registrants within the industries that self-identify as small business indicates a significant number of small entities. This regulatory action imposes no new reporting or recordkeeping requirement on small entities nor are we aware of any Federal program that would duplicate or conflict with this regulatory action.

PHMSA completed a regulatory flexibility analysis of the impact of this proposed rulemaking on small entities. We concluded that the NPRM has the potential to create significant economic impacts on a substantial number of small entities. However, due to patterns of CTMV ownership in affected industries, we believe many small entities will be impacted to a lesser extent than larger entities, or excepted from regulation altogether. PHMSA considered the impacts on small entities in its development of four regulatory alternatives (excluding the do nothing alternative), but we believe further accommodations would be inconsistent with the safety goal of the proposed regulation to prevent incidents involving unprotected wetlines containing flammable liquid which pose a safety hazard regardless of the size of the entity that owns or operates the CTMV. However, we believe the proposed 10-year compliance period for existing CTMVs affords small entities some flexibility in compliance by allotting a significant amount of time to small entities to retrofit their CTMVs or to acquire CTMVs that are in compliance to replace their existing fleet not in compliance. Additionally, we believe the exception from the requirements of this proposed regulatory action for wetlines on CTMVs containing no more than one liter of flammable liquid is a performance standard that also provides small entities with some flexibility in achieving compliance. Nonetheless, PHMSA has not identified any significant alternatives (i.e., technologies) that meet the statutory objectives and which minimizes any significant impact on small entities. We invite small entities to comment on alternatives that would meet the objective of this proposed regulatory action and minimize any significant impact on small entities.

The detailed small business analysis is available for review in the docket as part of the regulatory evaluation for this rulemaking. We invite comment addressing the impact that the proposals in this NPRM may have on small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. DOT has notified the Small Business Administration's Chief Counsel for Advocacy (SBA) of this notice of proposed rulemaking.

F. Paperwork Reduction Act

This NPRM imposes no new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal

Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this NPRM. An initial environmental assessment is available in the docket.

J. 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) or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, and Uranium.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follow:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

2. In § 173.33, paragraph (e) is revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(e) *Retention of hazardous materials in product piping during transportation.* (1) *Liquid hazard material other than Class 3 (flammable liquid) material.* No person may offer for transportation or transport a liquid hazardous material in Division 5.1 (oxidizer), Division 5.2 (organic peroxide), Division 6.1 (toxic), or Class 8 (corrosive to skin only) in the external product piping of a DOT specification cargo tank motor vehicle unless the vehicle is equipped with bottom damage protection devices conforming to the requirements of § 178.337–10 or § 178.345–8(b) of this subchapter, as appropriate, or the accident damage protection requirements of the specification under which the cargo tank motor vehicle was manufactured. This requirement does not apply to a cargo tank motor vehicle with external product piping designed, drained or purged so that the amount of material remaining in each pipe does not exceed one liter (0.26 gallon).

(2) *Class 3 (flammable liquid) material.* No person may offer or transport Class 3 material in the external product piping of a cargo tank motor vehicle marked and certified to a DOT specification on or after [DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE] unless the cargo tank motor vehicle is protected with the bottom damage protection devices conforming to the requirements of § 178.337–10 or § 178.345–8(b) of this subchapter, as appropriate. A cargo tank motor vehicle marked or certified to a DOT specification before [DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE] must be in compliance with requirements of this section by [DATE TWELVE YEARS AFTER EFFECTIVE DATE OF FINAL RULE]. The requirements in this paragraph (e)(2) do not apply to—

(i) A cargo tank motor vehicle designed and constructed with engine, body, and cargo tank permanently mounted on the same chassis with external product piping protected from impact by another motor vehicle by the structural components of the cargo tank motor vehicle, such as damage protection guards, framing members, or wheel assemblies;

(ii) A cargo tank motor vehicle containing combustible liquid as defined in accordance with § 173.120 of this part or a Class 3 flammable liquid material reclassed as a combustible liquid in accordance with § 173.120; or

(iii) A cargo tank motor vehicle with external product piping designed, drained or purged so that the amount of material remaining in each pipe does not exceed one liter (0.26 gallon).

(3) A sacrificial device equipped in accordance with § 178.345–8(b)(2) of this subchapter, may not be used to satisfy the accident damage protection requirements of this paragraph (e) if hazardous material is retained in product piping in excess of excepted amounts during transportation.

* * * * *

Issued in Washington, DC, on January 14, 2011, under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–1695 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110111018–1019–01]

RIN 0648–XA109

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) and seasonal allocations for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2011, through December 31, 2011. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2011 maximum HG for Pacific sardine is 50,526 metric tons (mt), of which 4,200 mt would initially be set aside for potential use under an Exempted Fishing Permit (EFP). The remaining 46,326 mt, constituting the initial commercial fishing HG, would be divided across the seasonal allocation periods in the following way: January 1–June 30—16,214 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14—18,530 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31—11,582 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt, plus an additional 2,000 mt set aside to buffer against reaching the total HG. This rule

is intended to conserve and manage Pacific sardine off the West Coast.

DATES: Comments must be received by February 11, 2011.

ADDRESSES: You may submit comments on this proposed rule identified by 0648–XA109 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you prefer to remain anonymous). You may submit attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2011" may be obtained from the Southwest Regional Office (*see* **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of a final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: Actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Conversely, annual biomass estimates are not currently calculated for species that are classified as monitored stocks (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the estimated biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with HG recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its HG recommendation to NMFS.

The purpose of this proposed rule is to implement the 2011 HG for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines what the maximum HG for the current fishing season will be, based, in large part, on the estimate of stock biomass. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2011 management season is 537,173 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2010 Council meeting, the Council adopted the 2010 Assessment of the Pacific Sardine Resource in 2010 for U.S. management in 2011 and a Pacific sardine biomass estimate of 537,173 mt. When this biomass estimate is applied to the harvest control rule for Pacific sardine in the CPS FMP, the resulting maximum HG is 50,526 mt. For the 2011 Pacific sardine fishing year, the Council recommended to NMFS a maximum HG of 50,526 mt. Similar to the action taken in 2009 and 2010, the Council also recommended that 4,200 mt of the available 2011 HG be initially reserved for fishing/research activities that would be undertaken under a potential exempted fishing permit (EFP). In 2010, 5,000 mt was subtracted from the total HG for an EFP.

The Council will hear proposals and comments on any potential EFPs at the March 2011 Council meeting, and at the April 2011 Council meeting it will make a final recommendation to NMFS on whether or not all or a portion of the 4,200 mt set-aside should be allocated for use under an EFP(s). NMFS will likely make a decision on whether to issue an EFP for Pacific sardine some time prior to the start of the second seasonal period (July 1, 2011). Any of the 4,200 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

The Council also recommended that the remaining 46,326 mt (HG of 50,526 mt minus proposed 4,200 mt EFP set-aside) be used as the initial overall commercial fishing HG for Pacific sardine, and that this amount be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council recommended incidental catch set-asides of 1,000 mt per allocation period, and an additional management uncertainty buffer of 2,000 mt in the third period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed. The additional management buffer in the third period is due to difficulties associated with closing the fishery, and to help ensure that the fishery does not exceed the maximum HG.

The directed harvest levels and incidental set-aside would be initially allocated across the three seasonal allocation periods in the following way: from January 1–June 30, 15,214 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt; from July 1–September 14, 17,530 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt; and from September 15–December 31, 8,582 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed.

For the remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. The proposed incidental fishery would also be constrained to a 30 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted downward to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total would be adjusted upward to account for this discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. The NMFS Southwest Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

For the 2011 Pacific sardine fishing season the Council also recommended an overfishing limit (OFL) of 92,767 mt and an Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) of 84,681 mt. The HG proposed for the 2011 fishing season is operationally similar to an Annual Catch Target (ACT) (as defined at § 600.310(f)(2)). These reference points are in accordance with the proposed Amendment 13 to the CPS FMP on which the Council took final action on in June 2010, and that will undergo review by NMFS. The intent of Amendment 13 is to revise relevant sections of the CPS FMP to ensure they are consistent with the objectives of the revised National Standard 1 (NS1) guidelines.

Detailed information on the fishery and the stock assessment are found in the report "Assessment of Pacific Sardine Stock for U.S. Management in 2011" (*see* **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement the 2011 HG for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest control rule in the FMP. The harvest control rule is applied to the current stock biomass estimate to derive the annual HG. The HG is determined using an environmentally-based formula accounting for the effect of ocean conditions on stock productivity.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery is closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Approximately 108 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 64 permits in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. The U.S. Small Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below $4 million. The average annual per vessel revenue in 2010 for the West Coast CPS finfish fleet was well below $4 million, and all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Accordingly, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2010 fishing year, the maximum HG was set at 72,039 mt. Approximately 66,000 mt of the HG was harvested during the 2010 fishing season, with an estimated total coastwide ex-vessel value of $12.2 million. Using these figures, the 2010 ex-vessel price per mt of Pacific sardines was $185.

The proposed HG for the 2011 Pacific sardine fishing season (January 1, 2011 through December 31, 2011) is 50,526 mt. This HG is approximately 25% less than the directed fishing HG for 2010 of 68,039 mt. This decrease in HG is due to a decrease in the coastwide Pacific sardine biomass from which the HG is directly derived.

If the fleet were to take the entire 2011 HG, and using the 2010 ex-vessel average price of $185 per mt of Pacific sardine, the total potential revenue for the entire fleet would be approximately $9.3 million. This would be slightly less than the average coastwide total ex-vessel value achieved from 2001–2010 of approximately $11.5 million. There will also likely be a drop in profitability based on this rule compared to last season due the lower HG this fishing season. Whether this will occur depends greatly on market forces within the fishery, and on the regional availability of the resource to the fleets and the fleets' ability to find pure schools of Pacific sardine. A change in the market rate and/or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested which, in turn, would reduce the total revenue to the fleet from Pacific sardine.

However, the revenue derived from harvesting Pacific sardine is only one factor determining the overall revenue of a majority of the CPS fleet, and therefore the economic impact to the fleet from the proposed action, can not be viewed in isolation. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna, making Pacific sardine only one component of a multi-species CPS fishery. A reliance on multiple species is a necessity because each CPS stock is highly associated to present ocean and environmental conditions. Because each species responds to such conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore as abundance levels and markets fluctuate, the CPS fishery as a whole has endured by depending on a group of species.

No significant alternatives to this proposed rule were considered or exist that would accomplish the stated objectives of the applicable statutes, and which would minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest control rule in the FMP. The harvest control rule is applied to the current stock biomass estimate to determine what the HG for that fishing season will be; as biomass increases so will the HG, conversely as biomass decreases so does the HG. The determination of the annual HG merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine equates to.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

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

Dated: January 21, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–1839 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 18
Thursday, January 27, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Animal & Poultry, Animal/Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals.

OMB Control Number: 0579–0040.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis and tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease and rinderpest. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. To fulfill this mission APHIS must collect pertinent information from those individuals who import animals and poultry, animal and poultry products, zoological animals, or animal germplasm into the United States. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information from foreign animal health authorities as well as U.S. importers; foreign exporters; veterinarians and animal health technicians in other countries; State animal health authorities; shippers; owners and operators of foreign processing plants and farms; USDA-approved zoos, laboratories, and feedlots; private quarantine facilities; and other entities involved (directly or indirectly) in the importation of animal and poultry, animals and poultry products, zoological animals, and animal germplasm. The information includes such data as the last reported outbreak of a given animal disease in the region, the trading practices engaged in by the region, and the intensity of the disease surveillance activities occurring in the region. This vital information helps APHIS to ensure that these imports pose a negligible risk of introducing exotic animal diseases into the United States. If the information was not collected it would cripple or destroy APHIS ability to protect the United States from exotic animal disease incursions.

Description of Respondents: Business or other for-profit; Farms; Individuals and Households; Federal Governments; and State, Local, and Tribal Governments.

Number of Respondents: 2,696.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 101,629.

Animal and Plant Health Inspection Service

Title: Communicable Diseases in Horses.

OMB Control Number: 0579–0127.

Summary of Collection: Title 21, U.S.C. 117 Animal Industry Act of 1884 authorizes the Secretary to prevent, control and eliminate domestic diseases such as equine infectious anemia, as well as to take action to prevent and to manage exotic diseases such as contagious equine metritis and other foreign animal diseases. The Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of the nation's livestock and poultry. The regulations in 9 CFR 75.4 govern the interstate movement of equines that have tested positive to an official test for EIA and provide for the approval of laboratories, diagnostic facilities, and research facilities.

Need and Use of the Information: The information collected from forms, APHIS VS 10–11, Equine Infectious Anemia Laboratory Test; VS 10–12, Equine Infectious Anemia Supplemental Investigation; and VS 1–27, Permit for the Movement of Restricted Animals, will be used to prevent the spread of equine infectious anemia. Regulations also require the use an Agreement for Approved Livestock Facilities, Request for Hearing, and Written Notification of Approval Withdrawal. Without the information it would be impossible for APHIS to effectively regulate the interstate movement of horses infected with EIA.

Description of Respondents: Farms; Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 163,949.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–1699 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Emergency Conservation Program.

OMB Control Number: 0560–0082.

Summary of Collection: The Farm Service Agency (FSA), in cooperation with the Natural Resources Conservation Service, the Forest Service, and other agencies and organizations, provides eligible producers and landowners cost-share incentives and technical assistance through several conservation and environmental programs to help farmers, ranchers, and other eligible landowners and operators conserve soil, improve water quality, develop forests, and rehabilitate farmland severely damaged by natural disasters. The authorities to collect information for this collection are found under the Agricultural Credit Act of 1978 (16 U.S.C. 2201–2205), which provides emergency funds for sharing with agricultural producers the cost of rehabilitating farmland damaged by natural disaster, and for carrying out emergency water conservation measures during periods of severe drought.

Need and Use of the Information: FSA will collect information using several forms. The collected information will be used to determine if the person, land, and practices are eligible for participation in the respective program and to receive cost-share assistance. Without the information, FSA will not be able to make eligibility determinations and compute payments in a timely manner.

Description of Respondents: Farms.

Number of Respondents: 40,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 48,778.

Farm Service Agency

Title: Customer Data Worksheet Request for SCIMS Record Change.

OMB Control Number: 0560–0265.

Summary of Collection: Core Customer Data is required in order to identify USDA program participants and ensure that benefits are directed to the correct customer and respective Tax Identification Numbers. There is no public law regarding the use or collection of Core Customer Data. The option to document and track Core Customer Data changes is necessary to ensure the integrity of the data and to provide the Farm Service Agency (FSA), Natural Resources and Conservation Service and Rural Development a method of verifying the validity of the information, and provide a necessary basis for pursuing legal remedies when needed.

Need and Use of the Information: Core Customer Data is necessary to input customer information for identity purposes and to provide a point of contact for the respective customer and a valid Tax Identification Number to direct program benefits to. The AD–2047 will be used to document Core Customer Data changes and also to provide a method to identify who made applicable changes and when this was done. Failure to collect and timely maintain the data collected will result in erroneous/out dated point of contact information, which could result in program information and benefits being directed to incorrect recipients.

Description of Respondents: Individuals or households.

Number of Respondents: 51,750.

Frequency of Responses: Reporting: Other (when necessary).

Total Burden Hours: 8,798.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–1700 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0028]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Biological Control Agent for Asian Citrus Psyllid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact relative to the control of Asian citrus psyllid (*Diaphorina citri* Kuwayama). The environmental assessment considers the effects of, and alternatives to, the release of an insect, *Tamarixia radiata,* into the continental United States for use as a biological control agent to reduce the severity of Asian citrus psyllid infestations. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of an

insect, *Tamarixia radiata,* into the continental United States for use as a biological control agent to reduce the severity of Asian citrus psyllid (ACP) infestations.

On May 20, 2010, we published in the **Federal Register** (75 FR 28233–28234, Docket No. APHIS–2010–0028) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) relative to the control of ACP.

The EA, titled "Proposed Release of a Parasitoid (*Tamarixia radiata* Waterston) for the Biological Control of Asian Citrus Psyllid (*Diaphorina citri* Kuwayama) in the Continental United States" (November 2009), considered the effects of, and alternatives to, the release of *Tamarixia radiata* into the continental United States for use as a biological control agent to reduce the severity of ACP infestations.

We solicited comments on the EA for 30 days ending on June 21, 2010. We received four comments by that date. All of the commenters were supportive of the proposed action.

Based on the information contained in the EA, we have determined that the environmental release of the insect *Tamarixia radiata* is not expected to result in a significant impact to the human environment, and an environmental impact statement does not need to be prepared.

The EA and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 21st day of January 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–1780 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, environmental assessment, finding of no significant impact, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0028.*

DEPARTMENT OF AGRICULTURE

Forest Service

Ochoco National Forest, Lookout Mountain Ranger District; Oregon; Marks Creek Allotment Management Plans EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ochoco National Forest is preparing an environmental impact statement (EIS) to analyze the effects of changing grazing management in three grazing allotments on the Lookout Mountain Ranger District. These three allotments are Marks Creek, Ortman and Wildcat. The proposed action will reauthorize term grazing permits, make rangeland improvements, reduce livestock stocking rates, manage livestock use and distribution to facilitate the improvement of riparian conditions, including streambank stability, riparian vegetation, and water temperature, and will conduct riparian restoration activities on some streams in the project area. These actions are needed to achieve and maintain consistency with the Ochoco National Forest Land and Resource Management Plan, as amended.

DATES: Comments concerning the scope of the analysis must be received by February 28, 2011. The draft environmental impact statement is expected to be completed and available for public comment in June 2011. The final environmental impact statement is expected to be completed in September 2011.

ADDRESSES: Send written comments to Slater Turner, District Ranger, Lookout Mountain District, Ochoco National Forest, 3160 NE. Third Street, Prineville, Oregon 97754. Alternately, electronic comments may be sent to *comments-pacificnorthwest-ochoco@fs.fed.us.* Electronic comments must be submitted as part of the actual e-mail message, or as an attachment in plain text (.txt), Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf).

FOR FURTHER INFORMATION CONTACT: Tory Kurtz, Project Leader, at 3160 NE. Third Street, Prineville, Oregon 97754, or at (541) 416–6500, or by e-mail at *tlkurtz@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to reauthorize livestock grazing consistent with Forest Plan standards and guidelines. Based on surveys conditions on some streams in the project area are moving away from desired condition; there is a need to make range improvements and change livestock management to move towards desired conditions for stream shade, bank stability and width-to-depth ratio. Livestock grazing is one of the factors that contribute to altered riparian function. Active riparian restoration activities will facilitate the achievement of the desired condition.

Proposed Action

The proposed action includes a variety of management strategies and activities, including reduction of livestock stocking rates, active management of livestock, relocation or reconstruction of existing water developments, planting of riparian hardwoods, placing logs and rocks in and along stream channels, and protection of riparian vegetation and streambanks.

Marks Creek Allotment

The allotment would consist of 10,546 acres divided between six pastures-Garden, Grant Meadows, Little Hay Creek, Nature, Pothole, and Spears Meadow. The current stocking rate (1482 AUMs) would be reduced to 939 AUMs; 232 cow/calf pairs from July 1 to September 30 would be authorized. Stocking reduction would take place over 4 years with total AUMs being reduced by about 135 per year. Existing structural improvements would be reauthorized including 13 troughs and about 28 miles of fence. The grazing system would be a six pasture rotation. The permittee or the permittee's representative would be present on the allotment and would move livestock, when needed, to achieve desired distribution to prevent excessive forage utilization or streambank alteration. Livestock would be checked a minimum of 2 days per week up until July 1 and then a minimum of every other day after July 1.

- Garden pasture:
- Reconstruct 1 water development.
- Grant Meadows pasture:
- Riparian restoration activities

would take place on 1.5 miles of Deadman Creek, 2 miles of Rush Creek, and 1 mile of Long Hollow Creek; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.

- Planting hardwoods, and creating physical barriers (such as wood, rock or

fences) to protect hardwoods and improve bank stability would take place on 2.5 miles of Grant Meadows.

• Small-diameter conifers (9" and smaller) would be thinned and cut materials would be used to protect aspen; two exclosures would be constructed to protect aspen stands.

• One new corral and one new water development would be constructed.

• Nine water developments would be reconstructed.

• Little Hay Creek pasture:

• Hardwoods would be planted and physical barriers (such as wood, rock or fences) would be constructed to protect hardwoods and improve bank stability on two miles of Little Hay Creek.

• Construct a hardened crossing on Little Hay Creek.

• Construct 1 new water development.

• Reconstruct 4 water developments.

• Nature pasture:

• Conifer thinning and utilization of thinned materials to protect aspen in an approximately 1-acre aspen stand.

• Conifer thinning and utilization of thinned materials to protect aspen in an approximately 3-acre aspen stand.

• Pothole pasture:

• Reconstruct 1 water development.

• Spears Meadow pasture:

• Riparian restoration activities will take place on 2 miles of Marks Creek; activities will include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.

• Planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability will take place on 0.5 miles of Little Hay Creek.

Ortman Allotment

The allotment would continue to consist of 2,360 acres (873 acres are in the National Forest System). The current permitted amount of 98 AUMs with 74 cow/calf pair from June 20 to July 19 would be authorized. Existing structural improvements would be reauthorized including 1 trough and about 8 miles of fence. The permittee or the permittee's representative would be present on the allotment and would move livestock, when needed, to achieve desired distribution to prevent excessive forage utilization or streambank alteration. Livestock would be checked a minimum of 2 days per week up until July 1 and then a minimum of every other day after July 1. One existing water development would be reconstructed and one new water development would be constructed. Riparian restoration would take place on 1 mile of Salmon Creek with activities including in-stream placement of wood and/or rock structures and creating physical barriers to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.

Wildcat Allotment

The allotment would consist of 18,901 acres divided between three pastures—Salmon, Viewpoint and Wildcat. The current permitted amount of 805 AUMs with 150 cow/calf pairs from June 1 to September 30 would be authorized. Existing structural improvements would be reauthorized including 6 troughs, 5 ponds, and approx. 15 miles of fence. The grazing system would be a three pasture rotation using the Salmon, Wildcat, and Viewpoint in that order. The permittee or the permittee's representative would be present on the allotment and would move livestock, when needed, to achieve desired distribution to prevent excessive forage utilization or streambank alteration. Livestock would be checked a minimum of 2 days per week up until July 1 and then a minimum of every other day after July 1.

• Salmon pasture:

• Actively restore riparian areas on 1 mile of Salmon Creek with activities including in-stream placement of wood and/or rock structures and creating physical barriers to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.

• Small-diameter conifers (9" and smaller) would be thinned and cut materials would be used to protect aspen.

• Viewpoint pasture:

• Small-diameter conifers (9" and smaller) would be thinned and cut materials would be used to protect aspen; an exclosure would be constructed to protect aspen stands.

• Riparian restoration activities, including headcut repair, and in-stream placement of wood and/or rock structures, would take place on Reach 1 of Cornez Creek, "No Name" Creek off of Forest Road 27, and McGinnis Creek. Wood material may come from on-site.

• One existing water development would be reconstructed.

• Wildcat pasture:

• Hardwoods would be planted and physical barriers (such as wood, rock or fences) would be created to protect hardwoods and improve bank stability on 2 miles of Wildcat Creek.

• Two existing water developments would be reconstructed.

• One new cattleguard would be installed on road 3350–519.

Possible Alternatives

In addition to the Proposed Action and any alternative that is developed following this scoping effort, the project interdisciplinary team will analyze the effects of:

• *No Action alternative:* No grazing permits would be reauthorized; cattle would be removed from all allotments within two years.

• *Current management alternative:* Permits would be reauthorized at current levels; there would be no new water developments, no riparian restoration, and there would be no requirement for permittees to move livestock out of sensitive areas, except as required by current permits.

Responsible Official

The responsible official will be Jeff Walter, Forest Supervisor, Ochoco National Forest, 3160 NE. Third Street, Prineville, Oregon 97754.

Nature of Decision To Be Made

Given the purpose and need, the deciding official will review the proposed action, the other alternatives, and the environmental consequences in order to make the following decisions:

• Whether and under what circumstances grazing will be reauthorized in the Marks Creek, Ortman, and Wildcat allotments.

• Whether and under what circumstances range improvements will be constructed.

• Whether and under what circumstances riparian restoration activities will be implemented.

Preliminary Issues

Preliminary issues identified include the potential effect of the proposed action on livestock grazing, heritage resources, fisheries, water quality, sensitive plants, and on the introduction and/or spread of invasive plants, as well as the cumulative effects of the proposed action where the effects of associated activities overlap with the effects of other management activities.

Scoping Process

Public comments about this proposal are requested in order to assist in identifying issues, determining how to best manage the resources, and focusing the analysis. Comments received to this notice, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous

comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: January 21, 2011.

Slater R. Turner,

District Ranger.

[FR Doc. 2011–1735 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fishlake Resource Advisory Committee will meet in Richfield, Utah. 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 and recommend projects for approval, and receive public comments on the meeting subjects and proceedings.

DATES: The meeting will be held February 16, 2011, 1 p.m.

ADDRESSES: The meeting will be held at the Sevier County Administration Building, 250 N. Main in Richfield, Utah. Written comments should be sent to Fishlake National Forest, 115 E. 900 N. Richfield, UT 84701. Comments may also be sent via e-mail to *jzapell@fs.fed.us,* or via facsimile to 435–896–9347.

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 Fishlake National Forest, 115 E. 900 N., Richfield, UT. Visitors are encouraged to call ahead to (435) 896–1070 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Zapell, RAC Coordinator, Fishlake National Forest, (435) 896–1070; *e-mail: jzapell@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: (1) Discuss establishing a separate charge code and set aside funding for member travel reimbursement, (2) review and recommend projects for approval, and (3) receive public comment on the meeting subjects and proceedings. 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. Public input sessions will be provided and individuals who made written requests by February 1, 2011 will have the opportunity to address the Committee at those sessions.

Dated: January 20, 2011.

Joseph G. Reddan,

Acting Forest Supervisor.

[FR Doc. 2011–1689 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lolo National Forest's Missoula County Resource Advisory Committee (RAC) will meet on Tuesday, May 10, 2011 from 4 p.m. to 6 p.m., in Missoula, Montana. The purpose of the meeting is to review and vote on submitted proposals, and receive public comment on the meeting subjects and proceedings.

DATES: Tuesday, May 10, 2011 from 4 p.m. to 6 p.m.

ADDRESSES: Missoula County Courthouse, Room 201; 200 W. Broadway, Missoula, MT 59802.

FOR FURTHER INFORMATION CONTACT: Boyd Hartwig; Address: Lolo National Forest, Building 24A Fort Missoula, Missoula, Montana 59804; Phone: 406–329–1024; e-mail: *bchartwig@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of individual member proposal rankings (2) brief discussion of proposals (3) vote on proposals in order of ranking (4) receive public comment (5) review old business. There will be an open comment period for the public at the start of the meeting.

Dated: January 20, 2011.

Paul Matter,

Missoula District Ranger.

[FR Doc. 2011–1738 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lolo National Forest's Missoula County Resource Advisory Committee (RAC) will meet on Thursday, April 14, 2011 from 9 a.m. to 12:30 p.m., in Missoula, Montana. The purpose of the meeting is to distribute submitted proposals to RAC members, allow the opportunity for project proponents to present their proposals, and receive public comment on the meeting subjects and proceedings.

DATES: Thursday, April 14, 2011 from 9 a.m. to 12:30 p.m.

ADDRESSES: Missoula County Courthouse, Room 201; 200 W. Broadway, Missoula, MT 59802.

FOR FURTHER INFORMATION CONTACT: Boyd Hartwig; Address: Lolo National Forest, Building 24A Fort Missoula, Missoula, Montana 59804; *Phone:* 406–329–1024 *e-mail: bchartwig@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Distribution and brief discussion of project proposals; (2) provide opportunity for proponents to give up to a 10 minute presentation for each project; (3) give RAC members the opportunity to ask questions of the proponents; (4) receive public comment. The meeting is open to the public. Opportunity for public input will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 20, 2011.

Paul Matter,

Missoula District Ranger.

[FR Doc. 2011–1739 Filed 1–26–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Reinstate a Previously Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service

(NASS) to request a reinstatement, with changes, to a previously approved information collection, the Distiller's Grains Survey. Revision to burden hours will be needed due to changes in the size of the target population (expanding from 12 States to 48 States), sampling design, and/or questionnaire length. The title of the information collection has been changed to Distiller's By-products Survey, to encompass both grain and non-grain commodities.

DATES: Comments on this notice must be received by March 28, 2011 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0247, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Distillers By-products Survey.

OMB Control Number: 0535–0247.

Expiration Date of Previous Approval: August 31, 2009.

Type of Request: To reinstate a previous approval for an information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. The goal of this NASS project is to conduct a large-scale survey to measure livestock producers' use of distiller's grains and other crops, which are nutritional by-products of distilling processes, such as ethyl alcohol (ethanol) or biodiesel production.

The Energy Independence and Security Act (EISA) of 2007 established targets for the production of biofuel in the United States. EISA specifies a minimum total amount of U.S. cellulosic and other biofuel production to reach 20 billion gallons by 2022. The Renewable Fuel Standard (RFS) passed as a part of the EISA, sets target levels for fuels produced from specific feedstock categories.

As more ethanol or biofuels are produced, there are also important by-products of the milling and/or fermentation processes: Distillers grains and distillers crops. These distillers by-products contain valuable protein, fiber, vitamins, and minerals and can be utilized as quality livestock feed. Many of the distillers by-products have a higher nutrition ratio than traditional feed stocks. Distillers by-products were traditionally sold to livestock operations in the vicinity of ethanol plants. Recent improvements in the milling and drying process have allowed a large portion of the by-products to be marketed in many new regions of the U.S. Some of these products are being marketed in foreign countries. Marketing of the increasing volume of distillers by-products to more livestock producers would generate additional sales for the distillers, contributing to plant stability and profitability.

Three small-scale studies of distillers grains were conducted in 2003 by the Iowa Department of Agriculture and Land Stewardship in partnership with the USDA/Federal-State Market Improvement Program. A status and assessment survey was conducted for each segment of the industry—ethanol producers, feed companies and marketers, and livestock feeders—to obtain data such as operation profiles, types and quantities of distillers grains, product qualities, volume of sales, pricing, storage facilities, marketing channels, plant services, transportation requirements, species fed, and feed ratios. In its summary report, which was disseminated at conferences and workshops, the Iowa Department of Agriculture and Land Stewardship noted that ethanol plants "must be able to sell their distillers grains, not just dispose of them. * * * It is an excellent product and more livestock feeders must be educated about its benefits and encouraged to make it a vital and substantial part of their feeding rations." To facilitate the marketing of distillers grains locally, regionally, and globally, the Department concluded that: (1) The nation's livestock feeders must be surveyed and tracked; different surveys should be administered to target feeders in States with the largest concentrations of specific species. (2) Any barriers to usage must be addressed. (3) The customer base must be expanded and the feed usage increased. (4) Distillers by-products promotions and education must be greatly expanded to match the increased levels of distillers by-products being produced.

The survey will contact livestock and poultry operations to determine the extent of feeding of distiller's by-products, and aspects on which producers base their decisions regarding livestock and poultry feed, such as nutrient values, product consistency, product form, product testing, inclusion rates, economics, shelf life, storage, and transportation. The probability-based survey will include beef (cow/calf and feedlot), dairy, swine, and poultry species with targeted size-of-operation criteria. The survey will be conducted in all States except Alaska and Hawaii. The survey reference date for this survey will be the calendar year of 2011. Approximately 70,000 operations will be contacted by mail in early January 2012, with a second mailing to non-respondents. In February and March telephone and personal enumeration will be used for any remaining non-respondents. The National Agricultural Statistics Service plans to publish summaries in September 2012 at the State level when possible for each livestock species. Some State level data may need to be published on regional or national level due to confidentiality rules. Many of the figures will be proportions or percentages which will allow statistical comparisons among operations not feeding distillers grains.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E–Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Farmers and ranchers.

Estimated Annual Number of Respondents: 70,000.

Estimated Total Annual Burden on Respondents: 12,100 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 6, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–1792 Filed 1–26–11; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Nevada Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at approximately 4:30 p.m. on Friday, February 25, 2011, at the Clark County Public Library, 1401 E. Flamingo Road, Las Vegas, NV 89119. The purpose of the meeting is for the committee to discuss its report on the status of civil rights.

Members of the public are entitled to submit written comments; the comments must be received in the Western Regional Office of the Commission by Friday, March 25, 2011. The address is 300 N. Los Angeles St., Suite 2010, Los Angeles, California 90012. Persons wishing to e-mail their comments or who desire additional information should contact Angelica Trevino, Administrative Assistant, at (213) 894–3437 or (800) 877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to: *atrevino@usccr.gov.*

Hearing-impaired persons who wish to submit written comments and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, January 24, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–1795 Filed 1–26–11; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of the Utah Advisory Committee will convene at 6 p.m. and adjourn at 7:30 p.m. (MST) on Thursday, February 24, 2011 at the City and County Building, 451 South State Street, Cannon Room 335, Salt Lake City, UT 84111. The purpose of the meeting is for the committee to discuss recent Commission and regional activities, discuss current civil rights issues in the State and plan future activities that include a civil rights resource directory, immigration, and issues affecting minority students as it prepares to select a project topic.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by March 24, 2011. The address is Rocky Mountain Regional Office, 999–18th Street, Suite 1380S, Denver, CO 80202. Persons wishing to e-mail their comments, or who desire additional information should contact Malee Craft, Regional Director, at 303–866–1040 or by e-mail to: *mcraft@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC on January 24, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–1799 Filed 1–26–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: BEES (Building for Environmental and Economic Sustainability) Please.

OMB Control Number: 0693–0036.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,875.

Number of Respondents: 30.

Average Hours per Response: 62 hours and 30 minutes.

Needs and Uses: Building for Environmental and Economic Sustainability (BEES) Please is a voluntary program to collect data from product manufacturers so that the environmental performance of their products may be evaluated scientifically using the BEES software. These data include product-specific materials use, energy consumption, waste, and environmental releases. BEES evaluates these data, translates them into decision-enabling results, and delivers

them in a visually intuitive graphical format.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to, OMB Desk Officer, Jasmeet Seehra, FAX Number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: January 24, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1798 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1736]

Reorganization of Foreign-Trade Zone 104 Under Alternative Site Framework Savannah, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Savannah Airport Commission, grantee of Foreign-Trade Zone 104, submitted an application to the Board (FTZ Docket 51–2010, filed 8/26/2010) for authority to reorganize under the ASF with a service area of the Georgia counties of Bulloch, Bryan, Chatham, Effingham, Evans, Liberty, Long, and Screven in and adjacent to the Savannah Customs and Border Protection port of entry; FTZ 104's existing, new, and renumbered Sites 1, 2, 3, 6, 7, 11, 12, 14, 15, and 16 would be categorized as magnet sites; and the grantee proposes three initial usage-driven sites (Sites 9, 10, and 13);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 53637–53638, 9/1/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 104 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1, 2, 3, 6, 7, 11, 12, 14, 15, and 16 if not activated by January 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 9, 10, and 13 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by January 31, 2014.

Signed at Washington, DC, this 12th day of January 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–1767 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–834]

Purified Carboxymethylcellulose From Mexico: Final Results of the First Five-Year ("Sunset") Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 29, 2010, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on purified carboxymethylcellulose ("CMC") from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Purified Carboxymethylcellulose from Mexico: Preliminary Results of the First Five-year ("Sunset") Review of Antidumping Duty Order*, 75 FR 60084 (September 29, 2010) ("Preliminary Results"). We provided interested parties an opportunity to comment on our *Preliminary Results.* The Department did not receive comments from either domestic or respondent interested parties. As a result of this review, the Department continues to find that that revocation of the antidumping duty order with respect to CMC from Mexico would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2010, the Department published in the **Federal Register** a notice of preliminary results of the full sunset review of antidumping duty order on CMC from Mexico, pursuant to section 751(c) of the Act. *See Preliminary Results,* 75 FR 60084. In our *Preliminary Results,* we found that revocation of the antidumping duty order with respect to CMC from Mexico would likely lead to a continuation or recurrence of dumping at the margins determined in the final determination of the original investigation. Id. We provided interested parties an opportunity to comment on our *Preliminary Results. Id.* We did not receive comments from either domestic or respondent interested parties.

Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The

merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3912.31.00.[1] This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.

Final Results of Review

We have made no changes to our *Preliminary Results*, 75 FR 60084. We continue to find that revocation of the antidumping duty order with respect to CMC from Mexico would likely lead to a continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted-average margin percentage
Quimica Amtex	12.61
All Others	12.61

In accordance with section 752(c)(3) of the Act, we will notify the International Trade Commission of the final results of this full sunset review.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or 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 this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: January 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–1797 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] Although HTSUS number 3912.31.00.10 may be more specific to subject merchandise, it was not created until 2005. As such, we are relying on HTSUS number 3912.31.00 for purposes of this sunset review because in determining whether revocation of an order would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period as well as the volume of imports for the periods before and after the issuance of the order. *See* section 752(c)(1) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Methodology for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") seeks public comment on its proposed methodological change to reduce the export price or constructed export price in certain non-market economy ("NME") antidumping proceedings by the amount of an export tax, duty, or other charge, pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended.

DATES: To be assured of consideration, comments must be received no later than February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Senior Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4491.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended (the "Act"), the Department is instructed to reduce the export price or constructed export price used in the dumping margin calculation by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C) {of the Act}." However, the Department's administrative practice has been that it cannot apply section 772(c)(2)(B) in NME antidumping proceedings because pervasive government intervention in NMEs precluded proper valuation of taxes paid by NME respondents to NME governments. This practice originated in the less-than-fair-value investigations of pure magnesium and magnesium alloy from the Russian Federation, which the Department then considered to be an NME. *See Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (Mar. 30, 1995) (final determination of sales at less than fair value) ("*Russian Magnesium*") (Comment 10). In those investigations, the Department determined not to reduce the NME respondents' U.S. prices based upon an export tax paid to the NME government, the Russian Federation. *Id.*

The *Russian Magnesium* petitioners subsequently challenged this determination before the Court of International Trade ("CIT"), and the CIT granted the Department's request for a voluntary remand to further explain its reasoning. *See Magnesium Corp. of America* v. *United States,* 20 CIT 1092, 1113–14 (1996) ("*Mag. Corp. I*"). In its remand results, the Department explained its "uniform approach" to transfers between NME governments and NME companies. The Department stated, in relevant part:

> The {NME} is governed by a presumption of widespread intervention and influence in the economic activities of enterprises. An export tax charged for one purpose may be offset by government transfers provided for another purpose. * * *
>
> To make a deduction for export taxes imposed by a NME government would unreasonably isolate one part of the web of transactions between government and producer. The Department's uniform approach to intra-NME transfers can be seen in its policy regarding transfers (or "subsidies") paid by a NME government to a NME producer. The Department—with the approval of the Court of Appeals—has declined to find such transfers to be subsidies given the nature of a {NME}. Such an economy is riddled with distortions, with the government influencing prices and cost structures, regulating investment, wages and private ownership, and allocating credit. Attempts to isolate individual government interventions in this setting—whether they be transfers from the government or from exporters to the government—make no sense.

See Remand Redetermination: *Magnesium Corp. of America, et al.* v. *United States,* at 6–8, dated Oct. 28, 1996 ("Remand Redetermination") (available at: *http://ia.ita.doc.gov/tlei/index.html*).

The CIT upheld the Department's remand results. *See Magnesium Corp. of America* v. *United States,* 20 CIT 1464, 1466 (1996) ("*Mag. Corp. II*"). The U.S. Court of Appeals for the Federal Circuit then affirmed the CIT's decision, stating that it agreed with the reasoning put forward in the Department's Remand Redetermination. *See Magnesium Corp. of America,* 166 F.3d 1364, 1370–71 (Fed. Cir. 1999) ("*Mag. Corp. III*").

However, since *Mag. Corp. III,* the Department has changed its practice with respect to application of the countervailing duty ("CVD") law to subsidized merchandise from China and Vietnam, which the Department continues to designate as NMEs. As explained in the countervailing duty investigations of Coated Free Sheet

Paper from China and Polyethylene Retail Carrier Bags from Vietnam, the present-day Chinese and Vietnamese economies are sufficiently dissimilar from Soviet-style economies that the Department can determine whether the Chinese or Vietnamese government have bestowed an identifiable and measurable benefit upon a producer, and whether the benefit is specific, including certain measures related to taxation. *See* "Whether the Analytical Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy," dated Mar. 29, 2007 (available at: *http://ia.ita.doc.gov/download/prc-cfsp/CFS%20China.Georgetown%20applicability.pdf*); *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam,* 74 FR 45811, 45813–14 (Sept. 4, 2009) (prelim. affirmative CVD determination), unchanged in final determination, 75 FR 16428 (Apr. 1, 2010) (final affirmative CVD determination), and accompanying Issues and Decision Memo. at III (Applicability of the CVD Law to Vietnam).

Pursuant to its determination that subsidies from certain NME governments to NME companies can be identified and measured, upon further reflection, the Department has reconsidered its administrative practice that taxes paid by NME companies to these NME governments cannot be identified and measured. Specifically, the Department proposes to change the administrative practice set forth in *Russian Magnesium,* as upheld in the *Mag. Corp.* cases, with respect to China and Vietnam. Accordingly, pursuant to section 772(c)(2)(B), the Department proposes to reduce the export price and constructed export price used in NME dumping margin calculations based upon export taxes and similar charges, including value added taxes ("VAT") applied to export sales, imposed by the Chinese and Vietnamese governments in future less-than-fair-value investigations and administrative reviews of antidumping duty orders. This methodology may later be applied to other NMEs, pursuant to a determination that the NME at issue is dissimilar from Soviet-style economies.

Therefore, as detailed below, the Department is proposing the following methodology to implement section 772(c)(2)(B) in future antidumping duty investigations and administrative reviews involving merchandise from China and Vietnam.

Proposed Methodology

The Department would determine whether, as a matter of law, regulation, or other official action, the NME government has imposed "an export tax, duty, or other charge" upon the subject merchandise during the period of investigation or the period of review (*e.g.,* export tax or VAT that is not fully refunded upon exportation). The Department anticipates that parties would place upon the record copies of laws, regulations, other official documents, or similar publicly available information that is demonstrative of government action in this regard. The Department would also consider evidence as to whether the particular respondent(s) was, in some manner, exempted from the requirement to pay the export tax, duty, or other charge. The Department anticipates that such evidence would include official documentation of the respondent's exemption.

Provided that the NME government imposed an export tax, duty, or other charge on subject merchandise as contemplated by section 772(c)(2)(B), and the respondent was not exempted from it, the Department would reduce the respondents' export price and constructed export price accordingly. The Department anticipates that, in most instances, the export tax, VAT, duty, or other charge will be assessed as a percentage of the price. In such cases, the Department would adjust the export price or constructed export price downward by the same percentage. In instances where the tax or charge is a flat fee or similar charge denominated in NME currency, the Department would determine the ratio of the flat fee to the respondent's export price or constructed export price as denominated in its domestic currency, and would then adjust the export price or constructed export price downward by the same ratio.

Submission of Comments: As specified above, to be assured of consideration, comments must be received no later than February 28, 2011. All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov*, Docket No. ITA–2010–0008, 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. All comments should be addressed to the Secretary of Commerce, *Attn:* Albert Hsu, Senior Economist, Office of Policy, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

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*.

Dated: January 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–1793 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA172

Marine Mammals; File No. 15453

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815 (Dr. Andrew Rossiter, Responsible Party), has applied in due form for a permit to conduct research on and enhancement of captive Hawaiian monk seals.

DATES: Written, telefaxed, or e-mailed comments must be received on or before February 28, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15453 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The Waikiki Aquarium is requesting a 5-year permit to continue to maintain in captivity two male non-releasable Hawaiian monk seals for research and enhancement purposes. Research proposed includes continuation of a long-term study on the digestive efficiency of the captive seals as they age using voluntary behaviors to collect bi-monthly weights and blubber ultrasound measurements. Seals would also be fed chromic oxide up to 72 times per year and marked, voided feces would be collected for determination of digestive efficiency. A second study proposed includes post-vaccination antibody response trials. West Nile virus (WNV) and canine distemper viruses (CDV) are considered a potential threat for the wild Hawaiian monk seal population. Each seal would be vaccinated twice for CDV and WNV, and to assess the effectiveness of the vaccines, blood and nasal swabs would be taken four times over the period of one year for antibody detection. The seals would be displayed to the public incidental to the research program, and the Waikiki Aquarium provides daily public narrations and informative educational graphics about the Hawaiian monk seal.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 24, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1789 Filed 1–24–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant positions on the Florida Keys National Marine Sanctuary Advisory Council: Boating Industry (alternate), Citizen at Large—Middle Keys (alternate), and Citizen at Large—Upper Keys (alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by February 23, 2011.

ADDRESSES: Application kits may be obtained from Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 292–0311 x245; *Lilli.Ferguson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 19, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–1659 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the U.S. Caribbean

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

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS); scoping meetings; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) and NMFS intend to prepare a DEIS to describe and analyze management alternatives to be included in an amendment to the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Amendment 6), an amendment to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (Amendment 3), an amendment to the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Amendment 5), and an amendment to the FMP for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands (Amendment 3). These alternatives will consider measures to revise management reference points and status determination criteria, implement annual catch limits (ACLs) and accountability measures (AMs) to prevent overfishing in both the commercial and recreational sectors, revise management of aquarium trade

species, establish recreational bag limits, establish exclusive economic zone sub-boundaries for purposes of applying accountability measures, and establish frameworks to adjust management measures as needed to constrain harvest to specified ACLs. The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DEIS.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by the Council by February 28, 2011. A series of scoping meetings will be held in February 2011. See **SUPPLEMENTARY INFORMATION** for the specific dates, times, and locations of the scoping meetings.

ADDRESSES: Written comments on the scope of the DEIS and requests for additional information on the amendments should be sent to NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; telephone 727–824–5305; fax 727–825–5308; or to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918; telephone 787–766–5927; fax 787–766–6239. Comments may also be sent by e-mail to *Bill.Arnold@noaa.gov* or *Graciela.Garcia-Moliner@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. William Arnold, phone 727–824–5305; fax 727–824–5308; e-mail *Bill.Arnold@noaa.gov;* or Graciela Garcia-Moliner, phone 787–766–5927; fax 787–766–6239; e-mail *Graciela.Garcia-Moliner@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 12, 2007, Congress amended the Magnuson-Stevens Fishery and Conservation Management Act (MSA) with passage of the Magnuson-Stevens Fishery and Conservation and Management Reauthorization Act (MSRA). While maintaining the requirement that "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry," the MSRA added new requirements to end and prevent overfishing via the application of ACLs and AMs.

Specifically, the MSRA requires that FMPs "establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability" (MSA Section 303(a)(15)). Further, the MSRA requires such measures be implemented in 2010 for fisheries determined by the Secretary of Commerce (Secretary) to be subject to overfishing and in 2011 for all other fisheries.

Currently, there are five species or species groups that have been identified as undergoing overfishing in the U.S. Caribbean. These species or species groups are: queen conch, parrotfish, Grouper Unit 1 (Nassau grouper), Grouper Unit 4 (tiger, yellowfin, red, misty, and yellowedge grouper), and Snapper Unit 1 (black, blackfin, silk, and vermilion snapper). These determinations were made during development of the Council's Sustainable Fisheries Act Amendment (SFA). As no stock assessments had yet been able to determine stock status in the U.S. Caribbean, these determinations were based on the informed judgment of those involved in the SFA working group, which included Federal, state, and local managers, scientists, and constituents. Establishment of ACLs and AMs for each of those species or species groups is addressed in Amendment 2 to the Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands. However, species not designated as undergoing overfishing in the Reef Fish, Queen Conch, Spiny Lobster, and Corals and Associated Plants and Invertebrates FMPs must have ACLs and AMs established by 2011.

The Council will develop a DEIS to describe and analyze management alternatives to implement the proposed provisions of these amendments. The amendments will provide updates to the best available scientific information regarding the species and species groups listed, and based on the information, the Council will determine what actions and alternatives are necessary to meet the statutory requirements for these stocks in 2011. Those alternatives may include, but are not limited to, a "no action" alternative regarding the fishery as well as alternatives to revise management reference points and status determination criteria, implement annual catch limits (ACLs) and accountability measures (AMs) to prevent overfishing in both the commercial and recreational sectors, revise management of aquarium trade species, establish recreational bag limits, establish exclusive economic zone sub-boundaries for purposes of applying accountability measures, and establish frameworks to adjust management measures as needed to constrain harvest to specified ACLs.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified this preliminary range of alternatives as a means to initiate discussion for scoping purposes only. This may not represent the full range of alternatives that eventually will be evaluated by the Council and NMFS.

Once the Council and NMFS complete the DEIS associated with the amendments to the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands, the FMP for Corals and Reef Associated Plants and Invertebrates for Puerto Rico and the U.S. Virgin Islands, the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands, and the FMP for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands, it must be approved by a majority of the voting members, present and voting, of the Council. After the Council approves this document, the DEIS and associated amendments will be submitted to NMFS for filing with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS) and before adopting final management measures for the amendments. The Council will submit both the final version of the combined amendments, and the supporting FEIS, to NMFS for review by the Secretary under the MSA.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final version of the combined amendments for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the final amendments.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final version of the combined amendments, their proposed

implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendments, the proposed regulations, or the FEIS, prior to final agency action.

Scoping Meeting Dates, Times, and Locations

All scoping meetings are scheduled to be held from 7 p.m. to 10 p.m. The meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Council (see **ADDRESSES**).

February 7, 2011, DoubleTree by Hilton San Juan, DeDiego Avenue, San Juan, Puerto Rico.

February 9, 2011, Mayagüez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico.

February 10, 2011, Holiday Inn Ponce & Tropical Casino, 3315 Ponce ByPass, Ponce, Puerto Rico.

February 16, 2011, The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

February 17, 2011, Holiday Inn (Windward Passage Hotel), Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

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

Dated: January 21, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–1842 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA181

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a peer review of work completed by its Habitat Plan Development Team on February 15–17, 2011. The review panel is being convened for the purpose of providing expert technical comments and advice on the use of the Swept Area Seabed Impact model in Council fishery management plans. The model is a geo-referenced analytical tool that is intended to estimate the adverse effects (Z) of fishing on seabed structures by combining fishing effort data, seabed substrate and energy data and gear specific habitat vulnerability parameters. This tool will enable a better understanding of fishing gear impacts on benthic habitats, the spatial distribution of benthic habitat vulnerability to particular fishing gears, and the distribution of adverse effects from fishing activities on benthic habitats. Recommendations from this group will be brought to the full Council for formal consideration.

DATES: This meeting will be held on Tuesday, Wednesday and Thursday, February 15–17, beginning at 10 a.m. on the first day and 8:30 a.m. on the subsequent days.

ADDRESSES: The meeting will be held at the Hotel Providence, 130 Mathewson Street, Providence, RI 02903; telephone: (800) 861–8990; fax: (401) 861–8002.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, February 15–17, 2011

Led by a member of the Council's Scientific and Statistical Committee (SSC), the three to four member panel will determine if the Swept Area Seabed Impact model approach is a reasonable way to estimate the magnitude and location of adverse effects of fishing on essential fish habitat (EFH); also, if the approach, including the geo-statistical and practicability analyses, are a reasonable way to develop and analyze spatially-based management alternatives to minimize the adverse effects of fishing on EFH; and finally, whether existing gaps in data and theoretical understanding of habitat-related processes have been identified during model development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: January 24, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–1763 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW91

Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex

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

ACTION: Notice of issuance of a Letter of Authorization; request for comments on Integrated Comprehensive Management Program Plan.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Southern California (SOCAL) Range Complex, which extends south and southwest off the southern California coast, for the period of January 22, 2011, through January 21, 2012.

NMFS also provides notice that the Integrated Comprehensive Management Program (ICMP) Plan, which is intended for use as a planning tool to focus Navy monitoring priorities pursuant to the MMPA and Endangered Species Act (ESA), has been updated for 2011. NMFS encourages the public to review this document and provide comments, information, and suggestions on the ICMP Plan.

DATES: This Authorization is effective from January 22, 2011, through January 21, 2012. Comments and information on

the ICMP Plan must be received no later than February 28, 2011.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here. The mailbox address for providing email comments on the ICMP Plan is *ITP.Hopper@noaa.gov.* Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–713–2289, ext. 123.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training, maintenance, and RDT&E in the SOCAL Range Complex became effective on January 14, 2009 (74 FR 3881, January 21, 2009), and remain in effect through January 14, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On August 1, 2010, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2010, for the taking of marine mammals incidental to training and research activities conducted within the SOCAL Range Complex under regulations issued on January 14, 2009 (74 FR 3881, January 21, 2009). The Navy has complied with the measures required in 50 CFR 216.274 and 216.275, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

Summary of Activity Under the 2010 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule.

Planned Activities and Estimated Take for 2011

In 2011, the Navy expects to conduct the same type and amount of training identified in the 2010 LOA. Similarly, the authorized take will remain within the annual estimates analyzed in the final rule.

Summary of Monitoring, Reporting, and Other Requirements Under the 2010 LOA Annual Exercise Reports

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from August 2, 2009, through August 1, 2010. The Navy conducted five Major Training Exercises (MTEs)—one Sustainment Exercise (SUSTEX), two Integrated Anti-Submarine Warfare Courses (IAC II), and two Composite Training Exercises (C2X) (the rule authorizes eight per year)—for a total of 40 days.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 210 marine mammal sightings totaling 1,217 animals.

2010 Monitoring

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises by dedicated MMOs, passive acoustic monitoring utilizing high-frequency acoustic recording packages (HARPs), and marine mammal tagging and tracking. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2010 monitoring effort and results (beginning on page 182 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report. Navy-funded marine mammal monitoring accomplishments within SOCAL for the past year include the following:

Visual Surveys

The Navy completed a total of 1,061 hours of visual surveys during or after training events. During this time, there were 331 sightings of approximately 29,269 marine mammals and 26.3 hours of detailed behavioral focal follows were recorded. Preliminary results from a single survey show that the most frequent initial behavioral state observed for common dolphins and fin whales was traveling. While fin whales were only observed traveling (although sometimes at different speeds), common dolphins were also observed logging, milling, and resting. There was one interesting observation of a minke whale breaching at a time when no active sonar was being used and no Navy vessels were in the area. The Navy plans to upload visual data from the aerial surveys to OBIS–SEAMAP, a spatially referenced online database, by summer 2011.

Marine Mammal Observations

A total of 144 hours of marine mammal observer (MMO) effort was completed during Navy training events. Of the 210 Navy marine mammal sightings during MTEs, there were 62 sightings of 306 marine mammals within 1,000 yards that qualified as mitigation events. Of the 306 individuals observed, 71 percent were dolphins, 16 percent were whales, and 12 percent were pinnipeds. Of the 62 mitigation events, sonar was turned off during 29 periods and turned down during 27 periods. The remaining six periods when mitigation did not occur were explained due to bowriding dolphins (for which there is an exception in the shutdown requirements) or marine mammals leaving a mitigation zone. In total, the Navy lost a minimum of 20 hours of training time due to mitigation events. There were no reports of marine mammals behaving in any unusual manner during these events.

Passive Acoustic Monitoring

Two Passive Acoustic Monitoring (PAM) devices were deployed for a total of 15,335 hours of high-frequency acoustic recording package (HARP) recordings before, during, and after

Navy training exercises. The devices detected at least 11 different marine mammal species during the monitoring period. Recordings from the delphinid species have been incorporated into a larger database of cetacean acoustic data and there are several current projects assessing clicks and/or whistles for species- and population-specific call structures.

Tagging

A total of 19 satellite tags were deployed on five different species of marine mammals. Highlights from the tagging results show long-term movement of Cuvier's beaked whales, one of the first indications that Southern California beaked whales may engage in non-local, out of area movement. Movements of a fin whale over a 160-day period have also been recorded.

In conclusion, the Navy's implementation of the monitoring plan accomplished several goals, primarily through contributions to larger bodies of data intended to better characterize the abundance, distribution, life history, and behaviors of the species in the SOCAL Range Complex. The monitoring satisfied the objectives of the monitoring plan and specifically contributed to a greater knowledge and understanding of: The density and distribution of species within the SOCAL Range Complex, which will be added to a growing database of marine mammal aggregations around the world; the vocalizations of different species, which contributes to the development of automated classification software; the movement patterns of individuals (both vertically in the water column on a daily basis, as well as horizontally over weeks and months); and the observable behavioral patterns of marine mammals, both with and without exposure to Navy training activities.

Except as described below in the Adaptive Management section, NMFS concludes that the results of these monitoring efforts, when taken together with the findings presented in the 2010 exercise report (see Annual Exercise Report section), do not warrant making changes to the current monitoring and mitigation requirements identified in the LOA. While the data collected by the Navy through monitoring and reporting builds on the existing body of information in a valuable way, none of the new data contradict, or amend, the assumptions that underlie the findings in the 2009 rule in a manner that would suggest that the mitigation or monitoring should change.

Adaptive Management

NMFS and the Navy conducted an adaptive management meeting in October, 2010, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Based on the implementation of the 2010 monitoring, the Navy proposed some slight modifications to their monitoring plan for 2011, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2011 LOA Application, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Integrated Comprehensive Monitoring Report

The 2010 LOA required that the Navy update the ICMP Plan to reflect development in three areas, specifically: (1) Identifying more specific monitoring sub-goals under the major goals that have been identified; (2) characterizing Navy Range Complexes and study areas within the context of the prioritization guidelines described in the ICMP Plan; and (3) continuing to develop data management, organization, and access procedures. The Navy has updated the ICMP Plan as required. Because the ICMP is an evolving Program, we have posted the ICMP on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* and are specifically requesting input, which the Navy and NMFS will consider and apply as appropriate.

Further, the Navy convened a monitoring meeting in October, 2010 to solicit input from NMFS and marine mammal and acoustic scientists regarding the comprehensive development and improvement of the more specific monitoring that should occur across the Navy's training areas. Subsequent to those discussions, the Navy has developed a scientific advisory group composed of individuals from the research community and academia that will develop a proposed Strategic Plan for Navy monitoring that better considers the biological, logistical, and resource-specific factors that are applicable in each training area (and which are summarized in the updated ICMP) to maximize the effectiveness of Navy monitoring within the context of the information that is most needed. Subsequently, NMFS and MMC representatives will review this proposed Strategic Plan for marine species monitoring, which may reflect monitoring differences in some Navy training areas from what is required in the 2010 LOA.

This Navy-wide Strategic Monitoring Plan will then be available for review and discussion at the required 2011 Navy Monitoring Meeting, which will take place in mid-2011. The Navy and NMFS will then modify the Navy-wide Strategic Plan for monitoring based on applicable input from the 2011 Monitoring Meeting and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and training areas. For training areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications, in the **Federal Register** and solicit public input. After addressing public comments and making changes as appropriate, NMFS would, as appropriate, issue new LOAs for the different training areas that reflect the updated ICMP and associated new Strategic Plan for Navy monitoring.

Whale Strikes in 2009

In 2009, a Navy vessel associated with the activities covered by the 2009 SOCAL Range Complex regulations collided with and injured or killed two large whales. Of note, in both cases, the Navy was in compliance with the mitigation and monitoring measures required by the rule and LOA, contacted NMFS in a timely manner, and provided the specific information outlined in the SOCAL Stranding Response Plan for whale strikes, as well as additional information. Due to these incidents, NMFS is working on a proposed modification to the 2009 SOCAL rule, which will establish a framework to authorize the incidental take of large whales by injury or mortality for the remainder of the five-year regulatory period.

Authorization

The Navy complied with the requirements of the 2010 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2011 for the Navy's SOCAL Range Complex activities is

consistent with our previous findings made for the total taking allowed under the SOCAL Range Complex regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2011 activities in the SOCAL Range Complex will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the SOCAL Range Complex from January 22, 2011, through January 21, 2012.

Dated: January 21, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1847 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Third-Party Submissions and Protests (formerly Green Technology Pilot Program).

Form Number(s): None.

Agency Approval Number: 0651–0062.

Type of Request: Revision of a currently approved collection.

Burden: 9,350 hours annually.

Number of Respondents: 1,225 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public between 7.5 and 10 hours, depending upon the complexity of the situation, to gather the necessary information, prepare the appropriate form or documents, and submit the information to the USPTO.

Needs and Uses: This information is required by 35 U.S.C. 122(c), 131 and 151 and administered by the USPTO through 37 CFR 1.99 and 1.291. This information collection is necessary so that the public may (i) make a submission in a published application and (ii) protest a pending application.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail:*

Nicholas_A_Fraser@omb.eop.gov.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

- *E-mail:* *InformationCollection@uspto.gov.* Include "0651–0062 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before February 28, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 24, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–1731 Filed 1–26–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 28, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 24, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title of Collection: Striving Readers Comprehensive Literacy Discretionary Grants.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 48.

Total Estimated Annual Burden Hours: 9,600.

Abstract: The Striving Readers Comprehensive Literacy program is authorized as part of the FY 2010 Consolidated Appropriations Act (Pub. L. 111–117) under the Title I demonstration authority (Part E, Section 1502 of the Elementary and Secondary Education Act (ESEA)). The FY 2010 Appropriations Act provides $200 million for a comprehensive literacy development and education program to advance literacy skills for students from birth through grade 12. The Act reserves eighty-nine percent of the funds

($178,000,000) for discretionary grants made to State educational agencies for the purpose of the States making subgrants to Local educational agencies or other nonprofit providers of early childhood education. Priority shall be given to agencies or other entities serving greater numbers or percentages of disadvantaged children. The legislation aims to advance the literacy skills, including pre-literacy skills, reading, and writing, for children from birth through grade 12 including limited-English-proficient students and students with disabilities. States must ensure that the funding is divided with at least fifteen percent of the subgranted funds serving children from birth through age five, forty percent of the funds used to serve students in kindergarten through grade five, and forty percent of the funds used to serve students in grades six through twelve including an equitable distribution of funds between middle and high schools.

This request includes information collection activities covered under the Paperwork Reduction Act (PRA). The data collected will be used by application reviewers to determine the State's proposed quality of State-level activities, the proposed quality of the State subgrant competition, the proposed project management, and the adequacy of the proposed resources requested in the application.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4486. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–1791 Filed 1–26–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Improving Literacy Through School Libraries; Office of Elementary and Secondary Education; Overview Information; Improving Literacy Through School Libraries Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.364A.

Dates:

Applications Available: January 27, 2011.

Deadline for Transmittal of Applications: March 28, 2011.

Deadline for Intergovernmental Review: May 26, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to improve student reading skills and academic achievement by providing students with increased access to up-to-date school library materials; well-equipped, technologically advanced school library media centers; and well-trained, professionally certified school library media specialists.

Eligible local educational agencies (LEAs) may use funds for the following activities: purchasing up-to-date school library media resources, including books; acquiring and using advanced technology that is incorporated into the curricula of the school in order to develop and enhance the information literacy, information retrieval, and critical-thinking skills of students; facilitating Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries, where possible; providing professional development for school library media specialists and providing activities that foster increased collaboration among library specialists, teachers, and administrators; and providing students with access to school libraries during non-school hours, including before and after school, weekends, and summer vacation periods. (20 U.S.C. 6383(g))

Priority: This priority is from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Competitive Preference Priority: For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105 (c)(2)(i) we award an additional five points to an applicant that meets this priority.

This priority is:

Turning Around Persistently Lowest-Achieving Schools

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

(c) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Definitions: For purposes of this priority, the following definitions apply. These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60

percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) the academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the "all students" group.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Program Authority: 20 U.S.C. 6383.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final clarification of eligible local activities, published in the **Federal Register** on April 5, 2004 (69 FR 17894). (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2011 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$600,000.

Estimated Average Size of Awards: $371,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools and State-administered schools that are considered LEAs under State law, in which at least 20 percent of the students served by the LEA are from families with incomes below the poverty line based on the most recent satisfactory data available from the U.S. Census Bureau at the time this notice is published. These data are Small Area Income and Poverty Estimates for school districts for income year 2009. A list of LEAs with their family poverty rates (based on these Census Bureau data) is posted on our Web site at *http://www.ed.gov/programs/lsl/eligibility.html.*

Note: Charter schools and State-administered schools must include documentation from their State educational agency (SEA) confirming eligibility for this program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Funds made available under this program must be used to supplement, and not supplant, other Federal, State, and local funds expended to carry out activities relating to library, technology, or professional development activities (20 U.S.C. 6383(i)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/lsl/applicant.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.364A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 15 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to the cover sheet; the budget section, including the recommended five-page budget narrative; the one-page abstract; the assurances and certifications; and the other attachments, including the resumes, endnotes, indirect cost rate agreements, if applicable, and the program eligibility form. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit. None of the material sent as appendices to the narrative, with the exception of resumes and endnotes, will be sent to the reviewers.

3. *Submission Dates and Times:*

Applications Available: January 27, 2011.

Deadline for Transmittal of Applications: March 28, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to

section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: May 26, 2011.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Improving Literacy through School Libraries program, CFDA number 84.364A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Improving Literacy through School Libraries competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.364, not 84.364A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Peter D. Eldridge, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E246, Washington, DC 20202–6200. FAX: (202) 260–8969; or David Miller, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E242, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.364A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.364A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 1251 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6383) and 34 CFR 75.210 and are as follows. The maximum score for all of these criteria is 100 points. The maximum score for

each criterion is indicated in parentheses.

(a) *Need for school library resources (10 points).* In determining the need for school library resources, the Secretary considers how well the applicant demonstrates the need for school library media improvement, based on the age and condition of school library media resources, including: book collections; access of school library media centers to advanced technology; and the availability of well-trained, professionally certified school library media specialists in schools served by the applicant.

(b) *Use of funds (20 points).* In determining the quality of the proposed use of funds, the Secretary considers how well the applicant will use the funds made available through the grant to carry out one or more of the following activities that meet its demonstrated needs:

(1) Acquiring up-to-date school library media resources, including books.

(2) Acquiring and using advanced technology, incorporated into the curricula of the school, to develop and enhance students' skills in retrieving and making use of information and in critical thinking.

(3) Facilitating Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries.

(4) Providing professional development (as described in the notice of final clarification of eligible local activities published April 5, 2004, in the **Federal Register** (69 FR 17894)), for school library media specialists that is designed to improve literacy in grades K–3, and for school library media specialists as described in section 1222(d)(2) of the ESEA (20 U.S.C. 6383), and providing activities that foster increased collaboration between school library media specialists, teachers, and administrators.

(5) Providing students with access to school libraries during non-school hours, including the hours before and after school, during weekends, and during summer vacation periods.

(c) *Use of scientifically based research (10 points).* In determining the quality of the proposed use of scientifically based research, the Secretary considers how well the applicant will use programs and materials that are grounded in scientifically based research, as defined in section 9101(37) of the ESEA (20 U.S.C. 7801(37)), in carrying out one or more of the activities described under criterion (b).

(d) *Broad-based involvement and coordination (10 points).* In determining the quality of the proposed plan for broad-based involvement and coordination, the Secretary considers how well the applicant will extensively involve school library media specialists, teachers, administrators, and parents in the proposed project activities and effectively coordinate the funds and activities provided under this program with other literacy, library, technology, and professional development funds and activities.

(e) *Quality of the project design (20 points).* In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(f) *Quality of project personnel (15 points).* In determining the quality of the personnel who will carry out the proposed project, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of key project personnel.

(2) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(g) *Adequacy of resources (10 points).* In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(h) *Evaluation of quality and impact (5 points).* In determining the quality of the proposed plan for evaluation, the Secretary considers how well the applicant will collect and analyze data on the quality and impact of the proposed project activities, including data on the extent to which the availability of, the access to, and the use of up-to-date school library media resources in the elementary schools and secondary schools served by the applicant increase and on the impact of the project on improving the reading skills of students.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds and achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

An additional factor we consider in selecting an application for an award is the equitable distribution of grants across geographic regions and among LEAs serving urban and rural areas (20 U.S.C. 6383(e)(3)).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for this program. These measures gauge improvement in student achievement and resources in the schools and LEAs served by the program by assessing:

(1) The percentage of students in schools served by the Improving Literacy through School Libraries program who are proficient in reading;

(2) The number of books and media resources purchased per student, pre- and post-grant, compared to the national average; and

(3) The difference in the number of purchases of school library materials (books and media resources) between schools participating in the Improving Literacy through School Libraries program and the national average.

The Department will collect data for these measures from grantees' final performance reports and other data sources.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Peter D. Eldridge, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E246, Washington, DC 20202–6200. Telephone: (202) 260–2514 or by e-mail: *Peter.Eldridge@ed.gov;* or David Miller, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E242, Washington, DC 20202–6200. Telephone: (202) 453–5621 or by e-mail: *David.Miller@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. You can view this document in text or PDF at the following site, also: *http://www.ed.gov/programs/lsl/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 21, 2011.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–1672 Filed 1–26–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Election Assistance Commission's Voting System Testing and Certification Program Manual, Version 1.0

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; comment request.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, the U.S. Election Assistance Commission (EAC) invites the general public and other Federal agencies to take this opportunity to comment on EAC's request to renew an existing information collection, EAC's Voting System Testing and Certification Program Manual, Version 1.0. 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 information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and included in the request for approval of this information collection by the Office of Management and Budget; they also will become a matter of public record. This notice requests comments solely on the four criteria above. Note: This notice solicits comments on the currently-used Manual, Version 1.0 *only.* Due to lack of a quorum, EAC will postpone making changes to Version 1.0 of the Manual until such a time as a quorum is re-established. See **SUPPLEMENTARY INFORMATION**, below.

DATES: Written comments must be submitted on or before 11:59 p.m. EDT on March 28, 2011.

ADDRESSES: Comments and recommendations on the proposed information collection must be submitted in writing through either: (1) electronically to *votingsystemguidelines@eac.gov;* via mail to Mr. Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; or via fax to (202) 566–1392. An electronic copy of the manual, version 1.0, may be found on EAC's Web site at *http://www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please contact Mr. Brian Hancock, Director, Voting System Testing and Certification, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background

In this notice, EAC seeks comments on the paperwork burdens contained in the current version of the Voting System Testing and Certification Program Manual, Version 1.0 OMB Control Number 3265–0004 only. Version 1.0 is the original version of the Manual without changes or updates. EAC is requesting an emergency extension for Version 1.0 and will abandon its Paperwork Reduction Act request for version 2.0 of the Manual at this time.

When EAC drafted Version 1.0 of the Manual in 2006, the agency sought input from experts and stakeholders. Specifically, EAC conducted meetings

with representatives from the voting system test laboratory and voting system manufacturing community. The Commission also held a public hearing in which it received testimony from State election officials, the National Institute of Standards and Technology, academics, electronic voting system experts, public interest groups, and the public at large.

In a notice dated November 30, 2010, EAC previously requested comments on a proposed new version of the Manual, Version 2.0. After EAC published its request for comments on Version 2.0, the agency lost its quorum. As a result, EAC has chosen to postpone implementing Version 2.0 of the Manual until such time as the Commission has a quorum again. At that point, EAC will start the Paperwork Reduction Act process from the beginning on Version 2.0 of the Manual. Soliciting comments through an emergency extension will permit EAC to continue to use the Control Number assigned to Version 1.0.

Current Information Collection Request, Version 1.0

Title: Voting System Testing and Certification Program, Version 1.0.

OMB Number: 3265–0004.

Type of Review: Emergency Extension.

Needs and Uses: Section 231(a) of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15371(a), requires EAC to "provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories." To fulfill this mandate, EAC has developed and implemented the Voting System Testing and Certification Program Manual, Version 1.0. This version is currently in use under OMB Control Number 3265–0004. EAC had hoped to finalize a revised Manual prior to the expiration of the current manual's control number. However, due to lack of a quorum, EAC will continue using the existing manual, version 1.0, necessitating this action. Although participation in the program in voluntary, adherence to the program's procedural requirements is mandatory for participants.

Affected Public: Voting system manufacturers.

Estimated Number of Respondents: 8.

Total Annual Responses: 8.

Estimated Total Annual Burden Hours: 200 hours.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2011–1809 Filed 1–26–11; 8:45 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Privacy Act of 1974; Systems of Records

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Privacy Act Systems of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4) and (11), Federal agencies are required to publish in the **Federal Register** a notice of the existence and character of systems of records agencies maintain on individuals. In this notice, EAC provides the required information for 5 such systems of records that are not otherwise covered by an existing Government-wide system of records notice. *See* **GOVERNMENT-WIDE SYSTEMS OF RECORDS,** below.

DATES: *Effective Date:* The proposed systems of records and routine uses included in this notice will be effective without further notice on March 8, 2011 unless comments received require a contrary determination.

ADDRESSES: Send written comments to Ms. Stacie Fabre, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. Comments may also be transmitted by facsimile to Ms. Fabre's attention at (202) 566–5542; or via electronic mail at *sfabre@eac.gov*, with "Comments on Privacy Act Systems of Records Notice" in the subject line. All comments must be sent or postmarked no later than 11:59 p.m. EDT on March 8, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Stacie Fabre by telephone at (202) 566–3105, or by electronic mail at *sfabre@eac.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, at 5 U.S.C. 552a(e)(4) and (11), directs each federal agency to provided notice to the public of systems of records it maintains on individuals. Accordingly, notice is hereby given of 5 systems of records maintained by EAC as described below. This notice also describes proposed routine uses of each system and provides contact information for inquiries. Following is a preliminary statement and the complete text of the 5 EAC systems of records. Of note, EAC maintains Federal Advisory Committee Act records for three statutory boards: (1) Board of Advisors; (2) Standards Board; and (3) Technical Guidelines Development Committee. However, EAC has not established systems of records for these boards because personally-identifiable information generated by EAC's business with its boards is maintained either in a government-wide system of records or in one of the 5 EAC systems of records.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

NOTICE OF SYSTEMS OF RECORDS; PRELIMINARY STATEMENT GOVERNMENT-WIDE SYSTEMS OF RECORDS:

In addition to the internal systems of records described below, the U.S. Election Assistance Commission (EAC) also maintains certain records covered by existing government-wide systems of records. Government-wide systems of records are established by federal agencies that are responsible for government-wide functions. Examples of agencies with government-wide functions are the Office of Personnel Management, the Office of Government Ethics, and the Department of Labor. Government-wide systems of records are described in notices published by the establishing agencies. While the establishing agency creates and administers the system, the actual records are physically maintained by agencies throughout the government. Requests for EAC records covered by a government-wide system of records should be directed to EAC pursuant to EAC's Privacy Act regulations at 11 CFR part 9410. In accordance with Office of Management and Budget (OMB) Circular No. A–130, EAC is not creating or publishing notices for the government-wide functions described in the following systems of records notices:

(1) DOL/GOVT–1: Office of Worker's Compensation Programs, Federal Employees' Compensation Act File, 67 FR 16815 (April 8, 2002);

(2) DOT/ALL–8: Employee Transportation Facilitation, 65 FR 19475 (April 11, 2000);

(3) EEOC/GOVT–1: Equal Employment Opportunity in the Federal Government Complaint and Appeal Records, 67 FR 49338 (July 30, 2002);

(4) EPA–GOVT–2: Federal Docket Management System (FDMS), 70 FR 15086 (March 24, 2005);

(5) GSA/GOVT–2: Employment Under Commercial Activities Contracts, 48 FR 6176 (February 10, 1983);

(6) GSA/GOVT–3: Travel Charge Card Program, 69 FR 4517 (January 30, 2004);

(7) GSA/GOVT–4: Contracted Travel Services Program, 71 FR 48764 (August 2, 2006);

(8) GSA/GOVT–5: Access Certificates for Electronic Services, 64 FR 29032 (May 8, 1999);

(9) GSA/GOVT–6: GSA SmartPay Purchase Charge Card Program, 71 FR 64707 (November 3, 2006);

(10) GSA/GOVT–7: Personal Identity Verification Identity Management System (PIV IDMS), 71 FR 56983 (September 28, 2006);

(11) GSA/GOVT–8: Excluded Parties List System (EPLS), 71 FR 70515 (December 5, 2006);

(12) MSPB/GOVT–1: Appeals and Case Records, 67 FR 70254 (November 21, 2002);

(13) OGE/GOVT–1: Executive Branch Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records, 68 FR 3097 (January 22, 2003), 68 FR 24722 (May 8, 2003);

(14) OGE/GOVT–2: Executive Branch Confidential Financial Disclosure Reports, 68 FR 3097 (January 22, 2003), 68 FR 24722 (May 8, 2003);

(15) OPM/GOVT–1: General Personnel Records, 71 FR 35356 (June 19, 2006);

(16) OPM/GOVT–2: Employee Performance File System Records, 65 FR 24732 (April 27, 2000);

(17) OPM/GOVT–3: Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Terminations of Probationers, 65 FR 24732 (April 27, 2000);

(18) OPM/GOVT–5: Recruiting, Examining, and Placement Records, 71 FR 35351 (June 19, 2006);

(19) OPM/GOVT–9: File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals, and Fair Labor Standards Act (FLSA) Claims and Complaints, 71 FR 35358 (June 19, 2006);

(20) OPM/GOVT–10: Employee Medical File System Records, 75 FR 35099 (June 21, 2010); and

(21) OSC/GOVT–1: OSC Complaint Litigation and Political Activity Files, 64 FR 63359 (November 19, 1999).

STATEMENT OF GENERAL ROUTINE USES:

In addition to the disclosures permitted pursuant to 5 U.S.C. 552a(b), EAC hereby gives notice of the following general routine uses. These general routine uses are incorporated by reference into each system of records described in this notice. Routine uses described in a specific system of records in this notice are in addition to the list of the following general routine uses; unless the routine use described in a specific system of records in this notice expressly supersedes the following general routine uses.

(1) In the event that a record in a system indicates any violation or potential violation of the law, whether civil, criminal, or regulatory in nature, and whether arising by statute, or by regulation, rule, or order issued pursuant thereto, the relevant record may be referred by authorized EAC personnel as a routine use to the appropriate agency, whether Federal state, local, or foreign, charged with the responsibility for investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall also include and be deemed to authorize any and all appropriate and necessary uses of such record in a court of law or before an administrative board or hearing.

(2) A record covered by a system may be disclosed by authorized EAC personnel as a routine use to designated officers and employees of other agencies and Departments of the federal government having an interest in the individual for employment purposes, including, but not limited to, the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

(3) Disclosure of information by authorized EAC personnel to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which EAC is authorized or required to appear, when:

(a) EAC, or any component thereof; or

(b) Any employee of EAC in his or her official capacity; or

(c) Any employee of EAC in his or her individual capacity where the Department of Justice or EAC has agreed to represent the employee; or

(d) The United States, when EAC determines litigation is likely to affect EAC or any of its components, is a party to litigation or has an interest in such litigation, and EAC determines that the use of such records by the Department of Justice or EAC is relevant and necessary to the litigation; provided, however, that in each case EAC determines that the disclosure is compatible with the purpose for which the records were collected;

(4) Any record in any system of records may be disclosed by authorized EAC personnel as a routine use to the National Archives and Records Administration in the course of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2096.

(5) Information from any system of records may be released by authorized EAC personnel to internal or external auditors in the conduct of an audit of EAC operations or accounts, but only to the extent that the information is relevant to and necessary for the conduct of the audit.

(6) Information from any system of records may be released by authorized EAC personnel to General Services Administration (GSA) staff so that GSA may carry out various small agency support services. These services include, but are not limited to, payroll processing, debt collection, timekeeping, benefits administration, processing and paying invoices, and obligating funds.

Information from any system of records may be released by authorized EAC personnel to the Office of the Inspector General (OIG), to the extent necessary to comply with an authorized OIG oversight function.

STORAGE:

These records are maintained in hard copy files in locked file cabinets when not in immediate use; in electronic format on servers, data disks, and encrypted thumb drives with controlled access.

NOTIFICATION PROCEDURES:

Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made in person or in writing at the location of the record system and to the person specified in the notice describing that record system. Requests concerning whether a government-wide system or records maintained by EAC contains information pertaining to the requester may be made in-person or by sending the request to the Executive Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. In the case where an individual believes EAC maintains records pertaining to him or her but cannot determine which record system contains those records, the individual may request assistance in-person or by sending the request to the Executive Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

Individuals wishing to access their records should contact EAC as specified in the Notification Procedure, above; and in EAC's Privacy Act regulations at 11 CFR 9410. Individuals must furnish all of the information specified at 11 CFR 9410.3–11 CFR part 9410.5 for their records to be located and identified. Requesters must also provide proof of

their identity prior to receiving access to a record, pursuant to 11 CFR 9410.4.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request amendment or correction of their records in a system of records maintained by EAC should contact the appropriate system manager, as described above. Individuals must furnish all of the information specified in the Notification Procedure, and comply with EAC's Privacy Act regulations at 11 CFR part 9410 to ensure that their records can be identified and located.

EAC–1

SYSTEM NAME:

Employee Pay and Leave Record Files.

SYSTEM LOCATION:

Located in hard copy files at 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; in electronic format on secured servers, data disks, and encrypted thumb drives with controlled access. EAC enters pay and leave information onto a General Services Administration (GSA)-maintained system. *See* GSA's Privacy Act systems of records notices for GSA's system location and associated information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EAC employees and personal services contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records regarding time and attendance and pay.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Budget and Accounting Procedures Act of 1950, as amended. 31 U.S.C. 3511, *et seq.*

PURPOSE:

To provide a system whereby EAC can track employees' payroll and leave information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records is routinely provided to (1) the General Services Administration for accounting, payroll, and debt collection purposes; (2) the U.S. Department of the Treasury for payroll, (3) the Internal Revenue Service for tax deductions and withholding, and (4) participating insurance companies holding policies with respect to EAC employees. *See* also General Routine Uses contained in the Preliminary Statement. Users include Human Resources personnel within EAC for the purpose of administering the agency's time and attendance process; designated EAC staff for the purpose of entering time and attendance information into the GSA-maintained system; and EAC managers and supervisors for the purpose of certifying time and attendance data for their respective employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in locked file cabinets in Human Resources staff offices. Copies of individual time and attendance records may be maintained by designated agency timekeepers and are stored in locked file cabinets. Electronic records are maintained in a secure password protected environment and maintained with safeguards meeting the security requirements of the Federal Information Security Management Act (FISMA) of 2002.

RETRIEVABILITY:

Records are retrieved by last name.

SAFEGUARDS:

EAC staff maintain hard copy files in locked file cabinets in controlled access offices located in the Human Resources Division. Human Resources staff who telecommute may possess hard copy files (or copies of such files) at alternative worksites and are provided instructions concerning how to maintain such information in a secure manner. EAC staff maintain electronic files in a controlled access environment. System managers determine user permission levels based on staff duties and responsibilities. Only those staff authorized to perform tasks associated with information contained in this system of records have permission to access and maintain these files. Network users are also notified when they log in to EAC systems that improper use of EAC electronic systems may violate applicable law and subject employees to disciplinary action. EAC staff who access electronic files remotely may only do so by connecting to EAC's servers via a secure remote password-protected connection.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

NOTIFICATION PROCEDURE:

See Preliminary Statement.

RECORD ACCESS PROCEDURES:

See Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Preliminary Statement.

RECORD SOURCE CATEGORIES:

EAC employees and personal services contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

EAC–2

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act (PA) Request Files.

SYSTEM LOCATION:

Located in hard copy files at 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; in electronic format on secured servers, data disks, and encrypted thumb drives with controlled access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have submitted Privacy Act requests, Freedom of Information Act requests, or correspondence concerning such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, formal requests, research, legal memoranda, written decisions, and appeals of agency decisions for FOIA and PA requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Privacy Act of 1974, 5 U.S.C. 552a; the Freedom of Information Act, 5 U.S.C. 552.

PURPOSE:

To maintain files of FOIA/PA requests for annual reports and tracking.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records is routinely provided to FOIA requesters and Privacy Act requesters; individuals named in the FOIA request; EAC staff assigned to help process, consider, and respond to such requests, including any appeals. Information may also be provided to the United States Attorney General or other federal officials to fulfill EAC's annual reporting requirements; or to Congressional members, Committees, or staff in response to a Congressional request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy records are maintained in file folders in locked cabinets in FOIA Officer, Privacy Act Officer, and Office of General Counsel staff offices. Materials responsive to a FOIA or Privacy Act request are also maintained by each individual respondent in locked file cabinets. Electronic records are maintained in a secure password protected environment and maintained with safeguards meeting the security requirements of the Federal Information Security Management Act (FISMA) of 2002.

SAFEGUARDS:

EAC staff maintain hard copy files in locked file cabinets in controlled access offices by FOIA Officers, the Privacy Act Officer, the Office of the General Counsel offices. EAC staff maintain electronic files in a controlled access environment. System managers determine user permission levels based on staff duties and responsibilities. Only those staff authorized to perform tasks associated with information contained in this system of records have permission to access and maintain these files. Network users are also notified when they log in to EAC systems that improper use of EAC electronic systems may violate applicable law and subject employees to disciplinary action. EAC staff who access electronic files remotely may only do so by connecting to EAC's servers via a secure remote password-protected connection.

RETRIEVABILITY:

Records are retrieved by number and year.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For FOIA: Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. For Privacy Act: Privacy Act Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

NOTIFICATION PROCEDURE:

See Preliminary Statement.

RECORD ACCESS PROCEDURES:

See Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Preliminary Statement.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from documents submitted by individuals, and in some cases, organizations, requesting information related to FOIA or the Privacy Act. Sources also include EAC employees in some instances.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

EAC–3

SYSTEM NAME:

Financial Management Files.

SYSTEM LOCATION:

Located in hard copy files at 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; in electronic format on secured servers, data disks, and encrypted thumb drives with controlled access. EAC transmits payment, obligation, and financial information to the General Services Administration (GSA) in hard copy and electronically for processing. *See* GSA's Privacy Act systems of records notices for GSA's system location and associated information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with whom EAC conducts financial transactions that are not otherwise covered by a government-wide system of records. This system of records does not cover individuals serving as personal services contractors. *See* Government-wide systems of records notices and notice EAC–1 for records concerning individuals who are personal services contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, banking and financial information, invoices, legal memoranda, and other records associated with EAC's financial management functions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Budget and Accounting Procedures Act of 1950, as amended. 31 U.S.C. 3511, *et seq.*

PURPOSE:

Information in this system is used to facilitate day-to-day financial management operations and for purposes of review, analysis, and planning by financial management personnel. Data in this system may also be used to prepare financial statements and other reports concerning obligations and payments from EAC appropriated funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be disclosed to the U.S. Department of Justice, the Department of the Treasury, the General Services Administration, or the Government Accountability Office (GAO) in connection with payment and debt collection activities. Information may also be disclosed to Office of the Inspector General personnel and independent outside auditors in conjunction with reviewing EAC financial management controls and statements. Users include financial management personnel for purposes of administrating EAC funds; and other EAC personnel with responsibilities for overseeing financial management and internal control functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in locked file cabinets in Procurement and financial management staff offices. Electronic records are maintained in a secure password protected environment and maintained with safeguards meeting the security requirements of the Federal Information Security Management Act (FISMA) of 2002.

SAFEGUARDS:

EAC staff maintain hard copy files in locked file cabinets in controlled access offices by financial management staff. EAC staff maintain electronic files in a controlled access environment. System managers determine user permission levels based on staff duties and responsibilities. Only those staff authorized to perform tasks associated with information contained in this system of records have permission to access and maintain these files. Network users are also notified when they login to EAC systems that improper use of EAC electronic systems may violate applicable law and subject employees to disciplinary action. EAC staff who access electronic files remotely may only do so by connecting to EAC's servers via a secure remote password-protected connection.

RETRIEVABILITY:

Records are retrieved by name and by Tax Identification Number.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. After receipt, the Executive Director will direct records requests to the appropriate financial management staff with responsibility for the specific records that are the subject of the request.

NOTIFICATION PROCEDURE:

See Preliminary Statement.

RECORD ACCESS PROCEDURES:

See Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Preliminary Statement.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by EAC financial management staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

EAC–4

SYSTEM NAME:

Election Assistance Commission Federal Financial Assistance and HAVA Grantee Files.

SYSTEM LOCATION:

Located in hard copy files at 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; in electronic format on secured servers, data disks, and encrypted thumb drives with controlled access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with whom EAC does business for purposes of providing Federal financial assistance and awarding grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grantee, federal financial assistance, and peer reviewer applications, financial and banking information, correspondence, and legal memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Budget and Accounting Procedures Act of 1950, as amended. 31 U.S.C. 3511, *et seq.*

PURPOSE:

The information in this system is used to issue grant solicitations, analyze grant applications, make award decisions, and manage and oversee grantees. Information in this system is also used to perform all administrative functions related to EAC's other Federal financial assistance programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used to administer all aspects of EAC's federal financial assistance and grant-making programs; and to conduct statistical research or analyze trends associated with these activities. Data may also be used to assist with Congressional oversight of Federal funds administered by EAC. Data may be shared with the Department of Health and Human Services (HHS) to enable HHS to service EAC grant recipients. Data may be disclosed to the Department of Justice, the U.S. Department of the Treasury, or the Government Accountability Office (GAO) in connection with payment and debt collection activities. Information may also be disclosed to GAO in connection with grant administration and audit activities within GAO's jurisdiction; and to the National Institute of Standards and Technology (NIST) in conjunction with joint EAC/NIST grant activities. Access to records in the system is limited to authorized personnel whose official duties require such access. Permission level assignments allow users access only to those functions for which they are authorized.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSTING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in locked file cabinets in financial management, grants, testing and certification, and research policies and programs staff offices. Electronic records are maintained in a secure password protected environment and maintained with safeguards meeting the security requirements of the Federal Information Security Management Act (FISMA) of 2002.

SAFEGUARDS:

EAC staff maintain hard copy files in locked file cabinets in controlled access offices by Grants; Research, Policy, and Programs; Testing and Certification; and financial management staff. Electronic data is stored on magnetic media in a computer system with controlled access that requires passwords and identity authentication for users. EAC staff maintain electronic files in a controlled access environment. System managers determine user permission levels based on staff duties and responsibilities. Only those staff authorized to perform tasks associated with information contained in this system of records have permission to access and maintain these files. Network users are also notified when they login to EAC systems that improper use of EAC electronic systems may violate applicable law and subject employees to disciplinary action. EAC staff who access electronic files remotely may only do so by connecting to EAC's servers via a secure remote password-protected connection.

RETRIEVABILITY:

Records are retrieved by name and by Tax Identification Number.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. After receipt, the Executive Director will direct records requests to the appropriate division staff with responsibility for the specific Federal financial management or grants records that are the subject of the request.

NOTIFICATION PROCEDURE:

See Preliminary Statement.

RECORD ACCESS PROCEDURES:

See Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Preliminary Statement.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by EAC financial management staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

EAC–5

SYSTEM NAME:

Agency Correspondence and Public Comments.

SYSTEM LOCATION:

Located in hard copy files at 1201 New York Avenue, NW., Suite 300, Washington, DC 20005; in electronic format on secured servers, data disks, and encrypted thumb drives with controlled access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who correspond with EAC and its employees in their official capacity; or who submit public comments to EAC in response to a solicitation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence to and from EAC and its employees in their official capacity. Records in this system of records may include comments specifically solicited by EAC; or comments sent to EAC absent a specific solicitation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

To maintain and track incoming and outgoing correspondence between individuals and EAC and its employees in their official capacity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. Records may also be disclosed to temporary employees, contingent employees, personal services contractors, and other individuals performing duties for EAC but not having agency employee status; when such individuals need access to the records to perform the agency functions assigned to them. Any record in this system may be used by EAC staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or administrative functions relating to official EAC business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in locked file cabinets in staff offices. Electronic records are maintained in a secure password protected environment and maintained with safeguards meeting the security requirements of the Federal Information Security Management Act (FISMA) of 2002.

SAFEGUARDS:

EAC staff maintain hard copy files in locked file cabinets in controlled access offices by division, depending on the type and subject matter of the correspondence. EAC staff maintain electronic files in a controlled access environment. System managers determine user permission levels based on staff duties and responsibilities. Only those staff authorized to perform tasks associated with information contained in this system of records have permission to access and maintain these files. Network users are also notified when they log in to EAC systems that improper use of EAC electronic systems may violate applicable law and subject employees to disciplinary action. EAC staff who access electronic files remotely may only do so by connecting to EAC's servers via a secure remote password-protected connection.

RETRIEVABILITY:

Records are generally retrieved by name, but may be retrieved by date of correspondence, subject matter, or tracking number, depending on which EAC division maintains the record.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. After receipt, the Executive Director will direct records requests to the appropriate division staff with responsibility for the specific federal financial management or grants records that are the subject of the request.

NOTIFICATION PROCEDURE:

See Preliminary Statement.

RECORD ACCESS PROCEDURES:

See Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Preliminary Statement.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from documents submitted by individuals covered by the system. Information in this system may also come from documents created by EAC staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2011–1811 Filed 1–26–11; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[FE Docket No. 10–161–LNG]

Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC Application for Long-Term Authorization to Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on December 17, 2010, by Freeport LNG Expansion L.P. (FLNG Expansion) and FLNG Liquefaction, LLC (FLNG Liquefaction) (collectively FLEX), requesting long-term, multi-contract authorization to export up to 9 million metric tons per annum (mtpa) of domestic natural gas as liquefied natural gas (LNG) for a 25-year period commencing on the date of the first export or five years from the date of the authorization, whichever is sooner. The LNG would be exported from the Freeport Terminal on Quintana Island near Freeport, Texas, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 28, 2011.

ADDRESSES: U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–159, 1000 Independence Ave. SW., Washington, DC 20585. (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

FLNG Expansion is a Delaware limited partnership and a wholly owned subsidiary of Freeport LNG Development, L.P. with its principal place of business in Houston, Texas. FLNG Liquefaction is a Delaware limited liability company and a wholly owned subsidiary of FLNG Expansion with its principal place of business in Houston, Texas. FLEX, through one or

more of its subsidiaries, intends to develop, own and operate natural gas liquefaction facilities to receive and liquefy domestic natural gas for export (pursuant to the export authorization sought herein) to foreign markets (Liquefaction Project). The Liquefaction Project facilities will be integrated into the existing Freeport Terminal. The Freeport Terminal presently consists of a marine berth, two 160,000 cubic meter full containment LNG storage tanks, LNG vaporization systems, associated utilities and a 9.6-mile pipeline and meter station.

FLEX intends to expand the terminal to provide natural gas pretreatment, liquefaction, and export capacity of up to 9 mtpa of LNG, which FLEX states is equivalent to 1.4 billion cubic feet of natural gas per day (Bcf/d). The facility will be designed so that the addition of liquefaction capability will not preclude the Freeport Terminal from operating in vaporization and send-out mode. The Liquefaction Project facilities will include the following facilities that were authorized by the Federal Energy Regulatory Commission (FERC) in an order dated September 26, 2006 [1]: (1) A second marine berthing dock; (2) A third LNG storage tank; and (3) Transfer pipelines between the second marine dock and LNG storage tanks.

Current Application

In the instant Application, FLEX requests that DOE grant long-term, multi-contract authorization for FLEX to export domestic LNG from the Freeport Terminal to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas and LNG, which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy. FLEX requests this authorization for up to 9 mtpa of LNG, up to a total of 225 million metric tons, over a 25-year term beginning on the date of the first export or five years from the date the authorization is granted, whichever is sooner.

FLEX states that rather than enter into long-term natural gas supply or LNG export contracts, it contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTA), under which individual customers who hold title to natural gas will have the right to deliver that gas to FLEX and receive LNG. FLEX states that in the current natural gas market, LTAs fulfill the role previously performed by long-term supply contracts, in that they provide stable commercial arrangements between companies involved in natural gas services. FLEX states that the Liquefaction Project will require significant capital expenditures on fixed assets. FLEX further states that although it has not yet entered into long-term LTAs or other commercial arrangements, long-term export authorization is required to attract prospective LTA customers willing to make large-scale, long-term investments in LNG export arrangements. FLEX states that both are required to obtain necessary financing for the Liquefaction Project.

FLEX requests long-term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. FLEX contemplates that the title holder at the point of export [2] may be FLEX or one of FLEX's LTA customers, or another party that has purchased LNG from an LTA customer pursuant to a long-term contract. FLEX requests authorization to register each LNG title holder for whom FLEX seeks to export as agent, and proposes that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included by DOE/FE in FLEX's export authorization, and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition to its registration of any LNG title holder for whom FLEX seeks to export as agent, FLEX states that it will file under seal with DOE/FE any relevant long-term commercial agreements between FLEX and such LNG title holder, including LTAs, once they have been executed.[3]

FLEX states that the source of natural gas supply for the Liquefaction Project will be the general United States natural gas market, including natural gas produced from shale deposits. Specifically, FLEX asserts that natural gas supply will come primarily from the highly liquid Texas market, but may draw upon the interconnected general U.S. natural gas market. FLEX states that while some of the proposed export supply may be secured through long-term contracts, large volumes are likely to be acquired on the spot market. FLEX provides further discussion of the gas supply markets in the Application.

Public Interest Considerations

In support of its Application, FLEX states that DOE/FE has consistently ruled that section 3(a) of the NGA creates a rebuttable presumption that proposed exports of natural gas are in the public interest. FLEX asserts that unless opponents of an export license make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest, DOE/FE must grant the export application.[4]

FLEX asserts that in evaluating whether the proposed exportation is within the public interest, DOE/FE applies the principles established by the Policy Guidelines,[5] which promote free and open trade by minimizing Federal control and involvement in energy markets, and DOE Delegation Order No. 0204–111, which requires "consideration of the domestic need for the gas to be exported." FLEX further states that in determining whether a particular application to export is within the public interest, the principal focus of DOE/FE's review is an analysis of the domestic need for natural gas proposed to be exported, and any other factors to the extent they are shown to be relevant to a public interest determination.

FLEX states that as a result of technological advances, huge reserves of domestic shale gas that were previously infeasible or uneconomic to develop are now being profitably produced in many regions of the United States. FLEX asserts that the United States is now estimated to have more natural gas resources than it can use in a century.[6] FLEX also states that large volumes of domestic shale gas reserves and continued low production costs will enable the United States to export LNG while also meeting domestic demand for natural gas for decades to come.

FLEX asserts that as U.S. natural gas reserves and production have risen, U.S. natural gas prices have fallen to the point where they are among the lowest

[1] *Freeport LNG Development, L.P.,* 116 FERC § 61,290, Docket No. CP05–361–000 (September 26, 2006).

[2] LNG exports occur when the LNG is delivered to the flange of the LNG export vessel. *See The Dow Chemical Company,* FE Docket No. 10–57–LNG, Order No. 2859 at p. 7 (October 5, 2010).

[3] FLEX states the practice of filing of contracts after the DOE/FE has granted export authorization is well established. *See Yukon Pacific Corporation,* ERA Docket No. 87–68–LNG, Order No. 350 (November 16, 1989); *Distrigas Corporation,* FE Docket No. 95–100–LNG, Order No. 1115, at p. 3 (November 7, 1995).

[4] DOE/FE Order No. 1473, note 42 at p. 13, *citing Panhandle Producers and Royalty Owners Association* v. *ERA,* 822 F.2d 1105, 1111 (DC Cir. 1987).

[5] *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas,* 49 FR 6684 (Feb. 22, 1984).

[6] *The Future of Natural Gas, Interim Report* MIT Energy Initiative at 9 (2010), "For this study, we have assumed a mean remaining [U.S.] resource base of around 2,100 Tcf—about 92 times the annual U.S. consumption of 22.8 Tcf in 2009" (MIT Report).

in the developed world.[7] FLEX states that many natural gas and LNG supply contracts in European and Asian markets are pegged to the price of alternative liquid fuels, such as oil, and global LNG prices have increased significantly during the last decade as the price of oil has risen. FLEX states that domestic natural gas prices are projected to remain low relative to European and Asian markets well into the future, making exports of LNG by vessel a viable long-term opportunity for the United States.

FLEX states that the Liquefaction Project is positioned to provide the Gulf Coast region and the United States with significant economic benefits by increasing domestic natural gas production. FLEX states that these benefits will be obtained with only a minimal effect on domestic natural gas prices. FLEX states that at current and forecasted rates of demand, the United States' natural gas reserves will meet demand for 100 years. FLEX states that the Liquefaction Project allows the United States to benefit now from the natural gas resources that may not otherwise be produced for many decades, if ever. FLEX provides further discussion on why the proposed export authorization is in the public interest.

First, FLEX contends that the project will cause direct and indirect job creation through construction (1,000 onsite jobs over 2–3 years) and operation (20 to 30 permanent jobs) of the Liquefaction Project, and indirect jobs as a result of increased drilling for and production of natural gas (17,000 to 23,000 jobs).[8]

Second, FLEX maintains that the Liquefaction Project would create significant economic stimulus, with the total economic benefits to the American economy estimated to be between $3.6 and $5.2 billion per year from 2015 to 2040.[9]

Third, FLEX contends that there will be a material improvement in the U.S. balance of trade. FLEX states that assuming an average value of $7 per million Btu, exporting approximately 1.4 Bcf/d of LNG through the Liquefaction Project will improve the U.S. balance of payments by approximately $3.9 billion per year.

Fourth, FLEX states the project will have significant environmental benefits by reducing global greenhouse gas emissions if the natural gas exported is used as a substitute for coal and fuel oil.

Fifth, FLEX states the Liquefaction Project supports American energy security. To support this statement, FLEX states that the United States has developed a massive natural gas resource base that is sufficient to supply domestic demand for a century, even with significant exports of LNG. FLEX states the Liquefaction Project will not adversely affect U.S. Energy security. FLEX references the MIT Report (footnote 6), which recommends policies the United States should pursue to "encourage an efficient integrated global gas market",[10] and further that the United States "should not erect barriers to gas imports or exports".[11]

Finally, FLEX provides a further discussion of the Altos Report, which FLEX commissioned (*see* footnote 7).

Based on the reasoning provided in the Application, FLEX requests that the DOE/FE determine that FLEX's request for long-term, multi-contract authorization to export LNG to non-FTA countries is not inconsistent with the public interest.

Environmental Impact

FLEX states that the Liquefaction Project improvements will be contained within the previously authorized operational area of the Freeport Terminal on Quintana Island, that the potential air impacts of the Liquefaction Project will be reviewed by the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA), and other environmental impacts of the Liquefaction Project will be reviewed by FERC under the National Environmental Protection Act (NEPA). FLEX states that FERC authorization will be conditioned upon issuance of air quality permits from TCEQ and EPA. Accordingly, FLEX requests that DOE/FE issue a conditional order authorizing export of domestically produced LNG pending completion of FERC's environmental review.

DOE/FE Evaluation

This export Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00J (Sept. 17, 2010) and DOE Redelegation Order No. 00–002.04D (Nov. 6, 2007). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be necessary or appropriate, these issues will include domestic need for the gas, the impact on U.S. gross domestic product, consumers, industry, U.S. balance of trade, jobs creation, and other issues, as well as whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Due to the complexity and novelty of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

You may submit comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, written comments can be submitted using the procedures discussed below. If using electronic filing, follow the on-line instructions and submit such comments under FE Docket No. 10–161–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions, and include only information that is intended to be publicly disclosed.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention or written comments, by hardcopy, as provided in DOE's regulations at 10 CFR part 590.

Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the Application must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties may be considered in determining the appropriate action to be taken on the Application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Except where comments are filed electronically, as described above, comments, protests, motions to

[7] *Analysis of Freeport LNG Export Impact on U.S. Markets,* T. Choi, D. Nesbitt, and B. Barnds, at 6, 15 (Altos Management Partners, Inc. 2010). (Altos Report).

[8] Altos Report, footnote 7, at 12 (2010).

[9] *Id.*

[10] MIT Report, footnote 6, at xvii (2010).

[11] *Id.* at 71.

intervene, notices of intervention, and requests for additional procedures shall be filed with the Office of Oil and Gas Global Security and Supply at the address listed in the **ADDRESSES** section.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by FLEX is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E–042, at the above address listed in **ADDRESSES**. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*. In addition, any electronic comments filed will also be available at: *http://www.regulations.gov*.

Issued in Washington, DC, on January 21, 2011.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2011–1812 Filed 1–26–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–537–001]

Commission Information Collection Activities (FERC–537); Comment Request; Submitted for OMB Review

January 20, 2011.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75 FR 64301, 10/19/2010) requesting public comments. FERC received no comments on the FERC–537 and has made this notation in its submission to OMB.[1]

DATES: Comments on the collection of information are due by February 28, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to Created by OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0060 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC11–537–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC11–537–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC11–537 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–537, "Gas Pipeline Certificates: Construction, Acquisition, and Abandonment" (OMB Control No. 1902–0060), is used by the Commission to implement the statutory provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432, and the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Under the NGA, natural gas pipeline companies must obtain Commission authorization to undertake the construction or extension of any facilities, or to acquire or operate any such facilities or extensions in accordance with Section 7(c) of the NGA. A natural gas company must also obtain Commission approval under Section 7(b) of the NGA prior to

[1] OMB will not make a decision on this proceeding until after 30 days from the time it is received.

abandoning any jurisdictional facility or service. Under the NGA and the NGPA, interstate and intrastate pipelines must also obtain authorization for certain transportation and storage services and arrangements, particularly a Part 284, Subpart G—Blanket Certificate (18 CFR 284.8).

The information collected is necessary to certificate interstate pipelines engaged in the transportation and sale of natural gas, and the construction, acquisition, and operation of facilities to be used in those activities, to authorize the abandonment of facilities and services, and to authorize certain NGPA transactions. If a certificate is granted, the natural gas company can construct, acquire, or operate facilities, plus engage in interstate transportation or sale of natural gas. Conversely, approval of an abandonment application permits the pipeline to cease service and/or discontinue the operation of such facilities. Authorization under NGPA Section 311(a) allows the interstate or intrastate pipeline applicants to render certain transportation services.

The data required to be submitted consists of identification of the company and responsible officials, factors considered in the location of the facilities and the detailed impact on the project area for environmental considerations. Also to be submitted are the following:

- Flow diagrams showing proposed design capacity for engineering design verification and safety determination;
- Commercial and economic data presenting the basis for the proposed action; and
- Cost of the proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 157.5–.11; 157.13–.20; 157.53; 157.201–.209; 157.211; 157.214–.218; 284.8; 284.11; 284.126; 284.221; 284.224.[2]

Action: The Commission is requesting a three-year extension of the FERC–537 reporting requirements.

Burden Statement: The first table shows a summary of the burden for this collection. Because the nature of the various filings that are covered by FERC–537 are so varied, another table has been included to give a more detailed description of the various elements of this burden estimate:

FERC data collection	Number of respondents	Average number of responses per respondent [3]	Average burden hours per response [4]	Total annual burden hours
	(1)	(2)	(3)	(1)×(2)×(3)
FERC–537	225	3.44	133	102,942

Details for FERC–537, "Gas Pipeline Certificates: Construction, Acquisition, and Abandonment," based on Fiscal Year 2010 information and records:

Regulation section 18 CFR * * *	Regulation topic	Number of respondents	Number of filings or responses	Avg. hours to prepare a filing or application
157.5–.11; & 157.13–.20	Interstate certificate and abandonment applications.		82	500
157.53	Exemptions	75 companies (25 different).	10	100
157.201–.209; 157.211; 157.214–.218.	Blanket Certificates prior notice filings		45	200
157.201–.209; 157.211; 157.214–.218.	Blanket Certificates—annual reports	145 companies (145 different).	336	50
284.11	NGPA Sec. 311 Construction—annual reports			
284.8	Capacity Release—recordkeeping	168	168	75
284.126 (a)&(c)	Intrastate bypass, semi annual transportation & storage—reports.	50 companies (50 different).	100	30
284.221	Blanket Certificates—one time filing, inc. new tariff and rate design proposal.	20	20	100
284.224	Hinshaw Blanket Certificates	2 (2 different)	2	75
157.5–.11; & 157.13–.20	Non-facility certificate or abandonment applications.	9 (3 different)	12	75
TOTALS		225 different	775	[1] 133

[1] Average, weighted.

The total estimated annual cost burden to respondents is $6,823,570 (102,942 hours/2,080 hours [5] per year, times $137,874 [6]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information;

[2] Sections 284.223 and 284.227 have been removed from this Notice since they have no reporting or records burden.

[3] From detailed table: No. of Filings/No. of Respondents, or 775/225 = 3.44

[4] A weighted average based on the information provided in the detailed table.

[5] Estimated number of hours an employee works each year.

[6] Estimated average annual cost per employee.

(3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) 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; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections 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, e.g. permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1715 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–59–000]

Northwest Pipeline GP; Notice of Application

January 20, 2011.

Take notice that on January 11, 2011, Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP11–59–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and pursuant to 18 CFR part 157, requesting abandonment approval and a certificate of public convenience and necessity authorizing Northwest to construct and operate its Molalla Capacity Replacement Project (Molalla Project) located in Clackamas and Marion Counties, Oregon. Specifically, the Molalla Project consists of: Abandonment in place of approximately 15 miles of 16-inch diameter pipeline and related facilities on Northwest's Camas to Eugene Line between milepost 21.1 and 36.06; and construction and operation of approximately 7.75 miles of 20-inch diameter pipeline adjacent to Northwest's existing 16-inch diameter Camas to Eugene Line beginning at milepost 41.02, 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Pam Barnes, Manager, Certificates and Tariffs, Northwest Pipeline GP, 295 Chipeta Way, Salt Lake City, Utah 84101, telephone no. (801) 584–6857, facsimile no. (801) 584–7764, and e-mail: *pam.j.barnes@williams.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 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: February 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1714 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13368–002]

Blue Heron Hydro LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

January 20, 2011.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 13368–002.

c. *Date filed:* November 1, 2010.

d. *Applicant:* Blue Heron Hydro LLC.

e. *Name of Project:* Townshend Dam Hydroelectric Project.

f. *Location:* U.S. Army Corps of Engineers Townshend Dam on the West River near the Town of Townshend, Windham County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lori Barg, Blue Heron Hydro LLC, 113 Bartlett Road, Plainfield, Vermont 05667. (802) 454–1874.

i. *FERC Contact:* Dr. Nicholas Palso, (202) 502–8854 or *nicholas.palso@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Project Description:* The Townshend Dam Hydroelectric Project would utilize the U.S. Army Corps of Engineers' existing Townshend Dam and reservoir and would consist of: (1) Two turbine generator modules located within the existing intake tower, each containing 6 horizontal mixed flow turbines directly connected to 6 submersible generator units for a total installed capacity of 925 kilowatts; (2) a new 12.47- kilovolt, 430-foot-long transmission line; and (3) appurtenant facilities. The project would have an estimated average annual generation of approximately 2,000 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, and prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (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. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1717 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–27–000]

Black Marlin Pipeline Company; Notice of Filing

January 20, 2011.

Take notice that on January 19, 2010, Black Marlin Pipeline Company submitted a request for a waiver of the reporting requirement to file the CPA Certification for FERC Form 2–A for 2010.

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 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 21, 2011.

Kimberly Bose,

Secretary.

[FR Doc. 2011–1723 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[AD11–8–000]

Notice Inviting Comments on Report

January 20, 2011.

Frequency Response Metrics to Assess Requirements for Reliable Integration of Variable Renewable Generation.	Docket No. AD11–8–000

The Commission is posting, and inviting comment upon, a report prepared by the Lawrence Berkeley National Laboratory, "Use of Frequency Response Metrics to Assess the Planning and Operating Requirements for Reliable Integration of Variable Renewable Generation" and its five supporting papers (collectively, "the Report").

Frequency response measures how the bulk power system performs in responding to a sudden loss of generation that could cause reliability problems such as blackouts. The purpose of the Report is to develop an objective methodology to evaluate the reliability impacts of varying resource mixes including increased amounts of renewable resources. The Report accomplishes this objective by developing and testing tools that can be used to assess and plan for the operational requirements of the bulk power system. The Report may assist the Commission in the development of policies relating to the issues raised in the Report.

The Report will be posted on the Commission's Web site at *http://www.ferc.gov.*

Comments on the Report should be filed within 45 days of the issuance of this Notice. The Commission encourages electronic submission of comments 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 comment to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings in this docket are accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and will be 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. 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.

Questions regarding this Notice should be directed to: Robert V. Snow, Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–6716. *Robert.Snow@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1713 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13740–000, 13749–000, 13775–000, 13781–000]

Lock+ Hydro Friends Fund XXXIX, FFP Missouri 3, LLC, Allegheny 3 Hydro, LLC, Three Rivers Hydro, LLC; Notice Announcing Preliminary Permit Drawing

January 20, 2011.

On May 18, 2010, at 8:30 a.m., the Commission received four preliminary permit applications for proposed projects to be located at the C. W. Bill Young Lock and Dam located on the Allegheny River in Allegheny County, Pennsylvania.[1] The applications were filed by Lock+ Hydro Friends Fund XXXIX, for Project No. 13740–000, FFP Missouri 3, LLC, for Project No. 13749–000, Allegheny 3 Hydro, LLC, for Project No. 13775–000, and Three Rivers Hydro, LLC, for Project No. 13781–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because four applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

that no applicant's plans are better adapted than the others, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the four applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1720 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

January 20, 2011.

Lock Hydro Friends Fund XXXV.	Project No. 13735–000
FFP Missouri 7, LLC	Project No. 13756–000
Dashields Hydro, LLC	Project No. 13779–000

On May 18, 2010, at 8:30 a.m., the Commission received three preliminary permit applications for proposed projects to be located at the Dashields Lock & Dam located on the Ohio River in Alleghany County, Pennsylvania.[1] The applications were filed by Lock Hydro Friends Fund XXXV, for Project No. 13735–000, FFP Missouri 7, LLC, for Project No. 13756–000, and Dashields Hydro, LLC, for Project No. 13779–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because three applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that no applicant's plans are better adapted than the others, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the three applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1718 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13763–000; Project No. 13772–000]

FFP Missouri 13, LLC, Grays Hydro, LLC; Notice Announcing Preliminary Permit Drawing

January 20, 2011.

On May 18, 2010, at 8:30 a.m., the Commission received two preliminary permit applications for proposed projects to be located at the Grays Landing Lock & Dam located on the Monongahela River in Greene County, Pennsylvania.[1] The applications were filed by FFP Missouri 13, LLC, for Project No. 13763–000, and Grays Hydro, LLC, for Project No. 13772–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because two applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that neither applicant's plans are better adapted than the other, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the two applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1722 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

January 20, 2011.

Lock Hydro Friends Fund XLIII.	Project No. 13745–000
FFP Missouri 14, LLC	Project No. 13758–000
Solia 4 Hydroelectric, LLC.	Project No. 13767–000

On May 18, 2010, at 8:30 a.m., the Commission received three preliminary permit applications for proposed projects to be located at the Monongahela River Lock & Dam No. 4 located on the Monongahela River in Washington County, Pennsylvania.[1] The applications were filed by Lock Hydro Friends Fund XLIII, for Project No. 13745–000, FFP Missouri 14, LLC, for Project No. 13758–000, and Solia 4 Hydroelectric, LLC, for Project No. 13767–000.

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because three applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that no applicant's plans are better adapted than the others, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (Eastern Time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the three applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1724 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

January 20, 2011.

Lock Hydro Friends Fund XLI.	Project No. 13736–000
Allegheny 7 Hydro, LLC	Project No. 13777–000

On May 18, 2010, at 8:30 a.m., the Commission received two preliminary permit applications for proposed projects to be located at the Allegheny River Lock & Dam No. 7 located on the Allegheny River in Armstrong County, Pennsylvania.[1] The applications were filed by Lock Hydro Friends Fund XLI, for Project No. 13736–000, and Allegheny 7 Hydro, LLC, for Project No. 13777–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because two applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that neither applicant's plans are better adapted than the other, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the two applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1719 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

January 20, 2011.

Lock+ Hydro Friends Fund XL.	Project No. 13746–000
FFP Missouri 4, LLC	Project No. 13750–000
Allegheny 4 Hydro, LLC	Project No. 13776–000
Three Rivers Hydro, LLC	Project No. 13782–000

On May 18, 2010, at 8:30 a.m., the Commission received four preliminary permit applications for proposed projects to be located at the Allegheny River Lock and Dam No. 4 located on the Allegheny River in Allegheny County, Pennsylvania.[1] The applications were filed by Lock+ Hydro Friends Fund XL, for Project No. 13746–000, FFP Missouri 4, LLC, for Project No. 13750–000, Allegheny 4 Hydro, LLC, for Project No. 13776–000, and Three Rivers Hydro, LLC, for Project No. 13782–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because four applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that no applicant's plans are better adapted than the others, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the four applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1712 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

January 20, 2011.

FFP Missouri 15, LLC	Project No. 13762–000
Morgantown Hydro, LLC	Project No. 13773–000
Three Rivers Hydro, LLC	Project No. 13784–000

On May 18, 2010, at 8:30 a.m., the Commission received three preliminary permit applications for proposed

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

projects to be located at the Morgantown Lock & Dam located on the Monongahela River in Monongahela County, West Virginia.[1] The applications were filed by FFP Missouri 15, LLC, for Project No. 13762–000, Morgantown Hydro, LLC, for Project No. 13773–000, and Three Rivers Hydro, LLC, for Project No. 13784–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because three applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that no applicant's plans are better adapted than the others, priority will be determined accordingly.

On January 27, 2011, at 10 a.m. (Eastern Time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the three applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1721 Filed 1–26–11; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Monday May 17, 2010, and 8:30 a.m. on Tuesday May 18, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9258–9]

Workshop To Discuss Issues Related to the Potential Development of Multipollutant Science and Risk Assessments for the Criteria Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of workshop.

SUMMARY: EPA is convening a public workshop to discuss issues related to the evaluation of health risks associated with exposures to air pollutant mixtures, focusing on the criteria air pollutants. This workshop is being jointly sponsored and organized by EPA's National Center for Environmental Assessment, Office of Air Quality Planning and Standards, Office of Research and Development, and the Health Effects Institute. The workshop will be held February 22–24, 2011, at the Carolina Inn in Chapel Hill, North Carolina. Although the workshop is open to the public, space is somewhat limited and registration is on first come-first served basis.

DATES: The workshop will be held on February 22, 23, and 24, 2011, beginning each day at 8 a.m. and ending at 5 p.m.

ADDRESSES: The workshop will take place at the Carolina Inn, 211 Pittsboro Street, Chapel Hill, NC 27516. The EPA contractor, ICF International, Inc., is providing logistical support for the workshop.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the workshop should be directed to Courtney Skuce at ICF International, Inc., *telephone:* 919–293–1660; *e-mail: EPA_Multipollutant@icfi.com.* Questions regarding the scientific and technical aspects of the workshop should be directed to Dr. Douglas Johns, *telephone:* 919–541–5596; *e-mail: johns.doug@epa.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Information About the Workshop

Sections 108 and 109 of the Clean Air Act require periodic review and, if appropriate, revisions of the various national ambient air quality standards (NAAQS) and the air quality criteria on which they are based. In most cases, evaluating the health impacts of exposure to a given air pollutant involves disentangling similar effects of exposure to other co-occurring air pollutants. While an understanding of the independent effects of exposure to individual pollutants is essential, it is important to recognize that under normal ambient conditions, individuals are not exposed to separate pollutants in isolation, but rather to a complex mixture of air pollutants. EPA is currently in the process of developing plans to conduct a multipollutant science assessment whereby the health effects of exposures to mixtures of air pollutants, particularly the criteria air pollutants, may be systematically evaluated. Further, EPA is interested in developing methods through which information from multipollutant epidemiologic and exposure studies may be applied to risk and exposure assessments conducted as part of the NAAQS reviews. In the context of implementation of the NAAQS, such methods may be applied to analyses of the health benefits of implementation policies resulting in reductions in the concentrations of multiple air pollutants. In addition, EPA is interested in identifying research needs and approaches that may best inform and characterize the health effects of exposure to mixtures of air pollutants.

EPA is holding this workshop with invited expert panelists to provide input related to reviewing the various NAAQS within a multipollutant context, as well as guidance on ways in which EPA research may assist in this effort. The workshop will be organized with three, one-day technical sessions to facilitate focused panel discussions around various issues associated with: (1) The use of scientific information and statistical approaches in conducting air pollution risk analyses in multipollutant exposure environments, (2) interpretation and integration of information across scientific disciplines in developing a multipollutant science assessment to support the reviews of the NAAQS and the air quality criteria on which they are based, and (3) novel research and analytical approaches to better characterize the health effects of multipollutant exposures. The organization of the workshop is intended to encourage workshop participants to think broadly about the available and emerging scientific evidence and to facilitate an open dialogue among participants across disciplines regarding how this science may help to inform key policy-relevant issues. The input provided by participants during the workshop discussions will be taken into account as EPA develops future plans, approaches, and processes for moving toward multipollutant approaches to

evaluating the health effects of air pollution. Ideally, attendees will be able to participate in all three phases of the meeting to provide coherence and maximally integrated discussions.

Dated: January 21, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–1773 Filed 1–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Call for Candidates

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) is currently seeking candidates (candidates must not currently be federal employees) to serve on the Board. FASAB is the body designated to establish generally accepted accounting principles for federal government entities. Generally, non-federal Board members are selected from the general financial community, the accounting and auditing community, or academics. Specifically, FASAB is particularly interested in candidates who have experience as:

- Analysis of financial information,
- Economists or forecasters,
- Academics,
- Auditors,
- Preparers of financial information, or
- Those otherwise knowledgeable regarding the use of financial information in decision-making.

The Board meets in Washington, DC, for two days every other month. Members are compensated for 24 days per year based on current federal executive salaries. Travel expenses are reimbursed.

Responses may be submitted by e-mail to *paynew@fasab.gov* or by fax to (202) 512–7366. Responses may also be sent to: Ms. Wendy Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW. (Mailstop 6817V), Washington, DC 20548.

Please submit your resume before February 13, 2011. Additional information about the FASAB can be obtained from its Web site at *http://www.fasab.gov.*

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: January 21, 2011.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2011–1667 Filed 1–26–11; 8:45 am]

BILLING CODE 1610–02–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 February 11, 2011.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Thomas Dunlap Lumpkin II, and Peyton White Lumpkin,* both in Pinecrest, Florida; to retain voting shares of Biscayne Bancshares, Inc., and thereby indirectly retain voting shares of Biscayne Bank, both in Coconut Grove, Florida.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Robyn Batson, as sole trustee of The Linda Lake Young Irrevocable Trust, the Lori Lee Young Irrevocable Trust, and the Robyn Elizabeth Batson Irrevocable Trust,* all of Broken Bow, Oklahoma, and all as members of the Young Family control group; to retain control of Southeastern Bancshares, Inc., and thereby indirectly retain control of 1st Bank & Trust, both in Broken Bow, Oklahoma.

Board of Governors of the Federal Reserve System, January 24, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–1776 Filed 1–26–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Frontier Holdings, LLC,* and Frontier Management, LLC, both in Omaha, Nebraska; to acquire 100 percent of the voting shares of ARSEBECO, Inc., and thereby indirectly acquire voting shares of Richardson County Bank & Trust Company, both in Falls City, Nebraska.

Board of Governors of the Federal Reserve System, January 24, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–1777 Filed 1–26–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0291; Docket No. 2010–0002; Sequence 19]

Submission for OMB Review; OMB Control No. 3090–0291; FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements

AGENCY: Office of Technology Strategy/Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an emergency new information collection requirement regarding FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 28, 2011.

ADDRESSES: Submit comments identified by Information Collection 3090–0291, FSRS Registration and Prime Awardee Entity-Related Information by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–0291, FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0291, FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0291, FSRS Registration and Prime Awardee Entity-Related Information Reporting (line up with left margin) Requirements" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0291.

Instructions: Please submit comments only and cite Information Collection 3090–0291, FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Miller, Program Analyst, Office of Technology Strategy/Office of Governmentwide Policy, GSA, at *jan.miller@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act of 2006, Public Law 109–282 (Transparency Act) requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA § 2(a), (2), (i), (ii). Beginning October 1, 2010, this Paperwork Reduction Act submission directs compliance with the Transparency Act to report prime and first-tier sub-award data. Federal agencies and prime awardees will ensure disclosure of Federal contract and grant sub-award and compensation data. This information collection requires information necessary for prime awardee registration into the FFATA Subaward Reporting System (FSRS) and review of its entity-related information, at *http://www.fsrs.gov.* An entity may be required to provide information to include:

- DUNS number.
- Name and address of entity.
- Parent DUNS number.
- Federal Award Identification Number (FAIN).
- CFDA Number.
- Federal Awarding Agency of the Grant.

If a prime awardee has already registered in the system to report contracts-related Transparency Act financial data, a new log-in will not be required.

B. Discussion of Public Comments

Burden Imposed. Two comments were received on the burden imposed by this information collection. One respondent commented that it appears from the precision of the data used to identify the number of respondents (49,308) GSA is relying on a specific source rather than simply estimating a number. Because there is no identification about where these data on respondents comes from, it is virtually impossible to assess whether they are accurate or based on valid assumptions and methodologies. The respondent requests that GSA and OMB publish additional information about the sources of data in this request so that they can be assessed in accordance with the letter and spirit of the Paperwork Reduction Act. The respondent also added that the simple round number of .5 hours per response identified in the estimate belies the effort that they and other similarly situated organizations would be required to undertake. One respondent requested that the burden estimate be re-evaluated.

Response: The number of respondents (49,308) is based on the total reported prime grant awardees reporting into USAspending.gov in FY 2009 (see Supporting Statement for Paperwork Reduction Act Submission, FSRS Registration and Prime Awardee Entity-Related Information, footnote #1, p. 10, at *http://www.reginfo.gov*). The burden time of .5 hour per response was based on the assumption that prime grant awardees are already required to be registered in the Central Contractor Registration (CCR). With a direct feed from CCR, FSRS pulls information associated with the prime awardee's DUNS number. Pre-populating entity data from CCR into FSRS significantly reduces the burden associated with a prime recipient's registration into FSRS. As a result, prime grant awardees will only be required to manually input a minimal amount of contact information when registering in FSRS.

Multiple Recipients. One comment was received expressing concern with the reporting and pre-population of fields and the ability to list multiple subawards on a single Federal award (FAIN) which is common on awards supporting clinical trials. The ability to create and submit a single report rather than submitting each subaward separately will be an important functionality for some grantees. The respondent also states that the batch-file reporting is particularly important if

only one FSRS report per FAIN can be submitted during a single 30-day reporting period.

Response: Both requested capabilities already exist in FSRS: A FFATA subaward report can contain multiple subawards against a single Federal award (as reported by Federal Award Identifier Number or FAIN). In fact, the FFATA subaward report should contain all subaward activity for that report month for that particular FAIN. There are also three methods for submitting multiple FFATA subaward reports: A batch upload template using Microsoft Excel, an XML report submission template and an XML web service. Technical documentation can be found on all three multiple report submission methods and on FSRS functionality on the Resources page from within the FSRS Web site or by direct link to *https://www.fsrs.gov/resources*.

Batch-File Submission. One respondent stated that the capability of uploading data from a batch file into FSRS does not take advantage of the agency and CCR data available as it does when entering data through the Web site. The batch file would need to include not only all of the local data, but all of the CCR and agency data would need to be entered locally as well in order to complete the report. Therefore, there is no pre-population advantage. The respondent urged that the batch-file process be modified to take advantage of the CCR and agency systems and eliminate the need to re-key data, such that the data sets needed to complete the report would be the same whether filed via batch or Web site data entry.

Response: There are three methods for submitting multiple FFATA subaward reports: A batch upload template using Microsoft Excel, an XML report submission template and an XML web service. These methods do take advantage of the system interfaces with CCR and the agencies' reported award data. Technical documentation can be found on all three multiple report submission methods and on FSRS functionality on the Resources page from within the FSRS Web site or by direct link to *https://www.fsrs.gov/resources*.

Foreign Entities as Subrecipients. Two comments were received stating that the value of the DUNS approach is less clear when working with foreign entities as subrecipients. These entities may or may not have a DUNS number and may or may not have ready access to apply for a DUNS number. One respondent stated that because of poor infrastructure, the telecommunication required to process a DUNS registration would prove very problematic, and that there is a vast difference between feasible reporting requirements for a municipality in the U.S. and for a small community of self-help organizations operating in a remote region of Africa. The respondent expressed concern regarding requiring local partner organizations to obtain a DUNS number and that posting of their data on a public website may pose unacceptable security risks for them. One respondent noted that the Final Guidance concerning Financial Assistance Use of Universal Identifier and Central Contractor Registration (2 CFR subtitle A, chapter 1, and part 25) requires subrecipients to obtain a DUNS number but an agency can exempt entities from the requirement in certain circumstances [§ 25.110(d)] with the caution that such exemptions should be rare. The respondent believes that agencies may need to exercise this authority more frequently than anticipated by OMB in the case of foreign subrecipients. The respondent urged OMB to consider giving agencies the option to apply the exemption from obtaining a DUNS number for foreign recipients at any value (values greater than $25,000), and that agencies should be directed to describe how an exemption under any of the conditions is obtained by the prime recipient.

Response: Based on OMB guidance, FSRS requires a valid DUNS number be used to (1) register as a prime grant awardee to report subaward activity in FSRS; and (2) report a subawardee. Without a valid DUNS number, subaward reporting cannot occur. Currently, 2 CFR Subtitle A, Chapter A Part 25 does allow for agency exemptions in certain circumstances. In those instances, agencies would not be able to report subaward activity in FSRS. GSA and OMB recognize the safety and security concerns regarding some types of foreign recipients and will provide additional guidance regarding the reporting of sensitive information. Any revisions to the requirements based on this guidance will be incorporated in a subsequent Paperwork Reduction Act submission for this information collection.

Foreign Assistance Awards—Data Elements. Four respondents suggested that the data collection fields and forms be reviewed to take into consideration foreign assistance awards. For example, as these programs are not conducted within U.S. congressional districts, the "principal place of performance" data field on the Prime Award Data Elements form could be modified to include a checkbox to make "overseas" if the purpose of the award is foreign assistance and the principal place of performance is not within the U.S. One respondent commented that the granularity of the notices is not a helpful or useful snapshot of how the U.S. Government is spending taxpayer dollars in development programs, and that additional elements would need to be added to the database in order to (1) maintain the accuracy of the information entered; (2) reduce misconceptions; and (3) ensure the safety of staff in politically sensitive countries.

Response: With a direct feed from USAspending.gov, FSRS displays the prime award data as reported by the awarding Federal agency. For subaward information, FSRS is able to accept foreign recipient locations and/or project place of performance. When completing an editable location field, the prime awardee selects "Non-US" from the State drop-down menu. When Non-US is selected for State, then a non-United States country must be selected and the zip code field and the congressional district become optional. With some limited exceptions, the reporting requirements apply to all prime awardees of Federal grants, including foreign prime recipients and foreign subawardees. Please refer to the data definitions found on the Resources page from within the FSRS Web site or by direct link to *https://www.fsrs.gov/resources* for more information on the data elements themselves. Contact your awarding agency with any specific questions regarding applicability.

Purpose of the Information Collection Request. One respondent asked what this ICR really does and why was it an emergency new information collection requirement.

Response: This information collection requires information necessary for prime awardee registration into the FFATA Subaward Reporting System (FSRS) and the review of its entity-related information. Emergency review and clearance of this new information collection requirement is essential to the implementation of the Federal Funding Accountability and Transparency Act ("FFATA" or "Transparency Act"). Without OMB approval, prime grant awardees would not have been able to report subaward and executive compensation data pursuant to the Transparency Act's transparency requirements for new grant awards as of October 1, 2010. Information on grants subaward and executive compensation will be collected on the FSRS Web site, *http://www.fsrs.gov*. The FSRS Web site is part of the Integrated Acquisition Environment and is managed at GSA. This information collection requests

approval of the information needed to properly register an entity in FSRS to facilitate the statutorily required reporting of Transparency Act information (DUNS number, name of entity, address, parent DUNS number, Federal Award Identification Number (FAIN), CFDA number and the Federal awarding agency of the grant).

C. Annual Reporting Burden

Respondents: 49,308.
Responses per Respondent: 1.
Hours per Response: .5 hr.
Total Burden Hours: 24,645.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0291, FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements, in all correspondence.

Dated: January 21, 2011.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2011–1750 Filed 1–26–11; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0290;Docket No. 2010–0002; Sequence 20]

Submission for OMB Review; OMB Control No. 3090–0290; Central Contractor Registration Requirements for Prime Grant Recipients

AGENCY: Office of Technology Strategy/Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an emergency new information collection requirement regarding Central Contractor Registration Requirements for Prime Grant Recipients.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Central Contractor Registration Requirements for Prime Grant Recipients, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 28, 2011.

ADDRESSES: Submit comments identified by Information Collection 3090–0290, Central Contractor Registration Requirements for Prime Grant Recipients by any of the following methods:

- *Regulations.gov*: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–0290, Central Contractor Registration Requirements for Prime Grant Recipients" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0290, Central Contractor Registration Requirements for Prime Grant Recipients". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0290, Central Contractor Registration Requirements for Prime Grant Recipients" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0290.

Instructions: Please submit comments only and cite Information Collection 3090–0290, Central Contractor Registration Requirements for Prime Grant Recipients, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Miller, Program Analyst, Office of Technology Strategy/Office of Governmentwide Policy, at *jan.miller@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requires information necessary for prime awardee registration into the FFATA Subaward Reporting System (FSRS) and review of its entity-related information. This will allow for prime awardee reporting of subaward and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (FFATA, or Transparency Act). This information collection requires that all prime grant awardees, subject to reporting under the Transparency Act register and maintain their registration in CCR.

B. Discussion of Public Comments

Rename the Central Contractor Registration to more accurately reflect its new purpose. Four comments were received expressing concern regarding the name of the Central Contractor Registration. Two respondents suggested that if it is necessary to have prime grantees maintain registration in a centralized database of all Federal awardees, that the registry be renamed to reinforce the statutory distinction between acquisition and assistance awards. Since nongovernmental organizations accept only assistance awards (cooperative agreements) from the U.S. Government, they are recognized as an independent, non-state actor that provides technical assistance through a people-to-people approach. As they are not agents of the U.S. Government, they feel that requiring grantees to register in a "contractor" registry would, by virtue of association, negate the distinction between assistance and acquisition, and could result in confusion about their role in implementing programs overseas. Two respondents believe that OMB should recognize that use of the term "contractor" in a requirement that is now being applied to recipients of grants and cooperative agreements is likely to have a problematic impact because of the documented tendency on the part of some Federal agencies to improperly differentiate between acquisition and assistance instruments, and that this has often been the case in Federal agencies that fund projects that are performed overseas. These respondents suggest that OMB consider changing the nomenclature, at some future date, to the *Central Contractor and Grantee Registry* to reinforce the statutory distinction derived from the Federal Grant and Cooperative Agreement Act of 1978 (Pub. L. 95–224).

Response: GSA acknowledges that the Central Contractor Registration (CCR) is now used by and supports both the contracts and grants communities. The registration services it provides are no longer limited to contractors alone. GSA also acknowledges the name CCR is not inclusive of the full range of registration services provided. Instead of renaming the system, however, GSA is

undertaking a restructuring of the supporting architecture to define consolidated, streamlined business services. CCR is the first migration group of existing, government-wide systems moving to this new architecture, known as the System for Award Management (SAM). The new system will provide the same capabilities found in the Federal procurement and award systems today—streamlined for efficiency and supported by common services to reduce costs and improve data quality. The business service for entity management with SAM will incorporate a restructured registration process better suited to the needs of both the contracts and grants communities as well as the ability to manage certifications and representations. While CCR will cease to exist as an independent application, the Web address for CCR (*https://www.bpn.gov/ccr/default.aspx*) will remain active for a period of time following the migration redirecting users to SAM where registration business services will be provided.

Foreign Assistance Awards. One respondent urged GSA and OMB to withdraw this notice until consultations can be had on less burdensome and more appropriate accountability procedures for international development and humanitarian relief nongovernmental organizations (NGOs) implementing Federal funding that will not increase the security risks for organizations and staff in the field.

Response: OMB and GSA sought to reduce burden on prime awardees while providing a means to report subaward activity pursuant to the Federal Funding Accountability and Transparency Act (Transparency Act). This information collection requires that all prime grant awardees subject to reporting under the Transparency Act register and maintain their active registration in CCR. The Transparency Act does not allow for exemptions for foreign assistance awards. This registration enables significant data reuse within the FSRS and other government systems, while increasing data quality. OMB will continue to work with all prime recipients' concerns to identify the least burdensome methods for reporting, recognizing the need to ensure the safety and security of certain foreign assistance recipients. As Transparency Act reporting matures, GSA welcomes specific recommendations on how to minimize reporting burden while complying with the Act's requirements.

Burden Imposed. Three comments were received regarding the burden of this information collection. One respondent commented that regarding the GSA estimate of 23,358 respondents, each respondent is expected to submit one response with a calculated entry time of one hour per response appears only to reflect a one-time estimation of the reporting burden on the prime without considering the subsequent efforts that would need to be made over the lifetime of an award by both prime and subawardees to maintain the accuracy of the information. One respondent stated that the notice does not offer estimates of the direct or indirect costs associated with collection, entry and maintenance of prime and subawardee records and that, given the time and funding required to meet the requirement in full, it would be difficult for U.S.-based international NGOs with hundreds of subawards and limited budgets to meet the reporting deadline for each subrecipient without dedicating a substantial number of new additional administrative personnel. Another respondent commented that it appears from the precision of the data used to identify the number of respondents (23,358), GSA is relying on a specific source rather than simply estimating a number. But because there is no identification about where these data on respondents comes from, it is virtually impossible to assess whether they are accurate or based on valid assumptions and methodologies. The respondent requests that GSA and OMB publish additional information about the sources of data in the request so that they can be assessed in accordance with the letter and spirit of the Paperwork Reduction Act. They also add that the simple round number of 1 hour per response identified in the estimate belies the effort that they and other similarly situated organizations would be required to undertake. One respondent requested that the burden estimate be re-evaluated.

Response: The figure of 23,358 grants respondents was derived from the number of grantees who are not currently registered in CCR. This number is based on the total number of unique prime grant awardees reporting into USAspending.gov over all years (80,625), minus the total number of Recovery Act-funded prime grant awardees who are currently required under FederalReporting.gov to register in CCR (55,267). The resulting remainder, 23,358, constitutes the total number of new prime grant awardees who may not be currently registered in CCR, and will, as a result of this revision, be required to register in the system. This figure may be an overestimate given that prime grant awardees may also be Federal contractors who, under this existing collection, are required to register in CCR. This figure may also be an overestimate to the extent that any grant awardee whose award amount is reimbursed through the Department of the Treasury's Secure Payment System is also already required to register in CCR; and because not all prime grant awardees will be required to register in CCR, if no reporting under FFATA is required. Because these are new statutory requirements for reporting, GSA has provided its best estimates based on available information. Where the public is encouraged to provide specific burden estimates associated with this reporting requirement, GSA will continue to review and revise these burden estimates as more information becomes available.

Purpose of the Information Collection Request. One respondent asked what this ICR really does and why was it an emergency new information collection requirement.

Response: This information collection requires that all prime grant awardees subject to reporting under FFATA register and maintain their registration in CCR. Emergency review and clearance of this new information collection requirement is essential to the implementation of FFATA. Without expedited OMB review and approval, prime grant awardees would not have been able to report subaward and executive compensation data pursuant to FFATA's transparency requirements for new grant awards as of October 1, 2010. The CCR was developed to centralize awardee information. This collection will leverage the central clearinghouse capacity of CCR to ensure that prime grant awardees have minimal burden in providing the Federal Government with its identifying information. This will ensure that the information provided to the Federal Government once will be used multiple times to facilitate multiple reporting requirements for prime grant awardees pursuant to FFATA.

C. Annual Reporting Burden

Respondents: 23,358.
Responses Per Respondent: 1.
Hours Per Response: 1.
Total Burden Hours: 23,358.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0290, Central Contractor Registration Requirements

for Prime Grant Recipients, in all correspondence.

Dated: January 21, 2011.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2011–1751 Filed 1–26–11; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0292; Docket No. 2010–0002; Sequence 18]

Submission for OMB Review; OMB Control No. 3090–0292; FFATA Subaward and Executive Compensation Reporting Requirements

AGENCY: Office of Technology Strategy/Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an emergency new information collection requirement regarding FFATA Subaward and Executive Compensation Reporting Requirements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FFATA Subaward and Executive Compensation Reporting Requirements, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 28, 2011.

ADDRESSES: Submit comments identified by Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0292.

Instructions: Please submit comments only and cite Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Miller, Program Analyst, Office of Technology Strategy/Office of Governmentwide Policy, GSA, at *jan.miller@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act of 2006, Public Law 109–282 (Transparency Act) requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA § 2(a), (2), (i), (ii). Beginning October 1, 2010, this Paperwork Reduction Act submission directs compliance with the Transparency Act to report prime and first-tier subaward data. Specifically, Federal agencies and prime awardees of grants will ensure disclosure of executive compensation of both prime and subawardees and subaward data. This information collection requires reporting of only the information enumerated under the Transparency Act.

B. Discussion of Public Comments

Reporting of Executive Compensation for All State Employees. One State agency commented that the request for comments implies that FFATA requires the reporting of executive compensation for all State employees and sub-contractors and awardees, but the notice did not define what "executive compensation" means. The respondent asked if this is the salary and benefits that the chief executives of these entities make, or does this apply to all employees of these entities. The respondent also stated that this would be a very time-consuming and difficult task and that they could encounter privacy concerns with some of the private firms.

Response: Entity has the meaning given in 2 CFR part 25. *Executive* means officers, managing partners, or any other employees in management positions. *Total Compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see Part 170 Appendix A):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (*e.g.,* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

Under the Act, a prime entity will be required to report executive compensation about its own or its subawardee's top five highly compensated officials if: The entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and $25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to the information about the compensation of the senior executives of the entity through periodic reports filed under

section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.)

Duplicate Collection Requirement. Four respondents commented that the requirement for information on executive compensation duplicates the requirement currently imposed by the Internal Revenue Service for U.S. nonprofit tax exempt organizations when they submit their returns on Form 990. The respondents suggest that a means be created to allow respondents to identify in their submissions when such data has previously been or will be submitted on behalf of any U.S.-based subrecipients, and the timing of those other submissions.

Response: Internal Revenue Service Form 990 is required for non-profits, charities and other tax-exempt organizations to maintain their tax-exempt status. The Transparency Act does not exempt organizations which file the IRS Form 990 from the requirements of the Transparency Act.

Practicality and Utility of Collecting the Information for Foreign (non U.S.-based) Subrecipients. Five respondents provided comments. Four respondents commented that this comprehensive requirement was enacted without considering the practicality and utility of collecting the information for foreign (non U.S.-based) subrecipients, and that the imposition of this requirement is impractical, counterproductive and even damaging to other important U.S. Government objectives. This is particularly the case in countries where issues of security, sovereignty, independence and custom are prevalent. Respondents recommended that OMB exempt primary recipients from having to collect and submit such data on non U.S.-based entities. One respondent commented that collecting additional information on executive compensation of both prime and subawardees will neither enhance the utility of the information collected nor meet the purpose of FFATA. The respondent maintains that using summary or aggregate budget data will not endanger the safety of nongovernmental organizations' (NGOs) employees in the field, or violate privacy rights, and is a more accurate reflection of the U.S. Government's expenditure of taxpayer dollars. One respondent also questioned the value and utility of reporting individual subaward data on such groups to the American public and recommended that the proposed rule be revised with a blanket waiver for individual reporting on foreign subrecipients to an aggregate reporting of the number of subawards issued and total value. One respondent suggested that avenues should be explored to harness existing documentation on grants and cooperative agreements to meet the need for greater transparency.

Response: Using summary budget data will not meet the requirements of the Transparency Act; the Act specifically requires the collection of executive compensation if the threshold requirements for such reporting are met. GSA and OMB recognize the safety and security concerns regarding some types of foreign recipients and will provide additional guidance regarding the reporting of sensitive information. Any revisions to the requirements based on this guidance will be incorporated in a subsequent Paperwork Reduction Act submission for this information collection.

Burden Imposed. Seven comments were received concerning the burden that will be imposed by this information collection. Two respondents commented on the burden number of 49,308 (number of respondents) and that it appears GSA is relying on a specific source rather than estimating a number, that the source of the information is not identified, and that it is impossible to assess whether the number of respondents is accurate or based on valid assumptions and methodologies. The respondents requested that GSA and OMB publish additional information about the sources of data in this request so they may be assessed in accordance with the letter and spirit of the Paperwork Reduction Act. Two respondents added that the estimate of the time required to compile the executive compensation data on behalf of subrecipients is grossly understated. Those who have large portfolios of subgrants (in some cases in the hundreds) indicate that since this data is not routinely gathered because of the likelihood that such personnel are not being paid in whole or in part directly from the subaward, they would be required to initiate an entirely new information collection at considerable effort and cost. They also state that the simple round number of 2 hours per response identified in the estimate belies the effort that they and other similarly situated organizations would be required to undertake. Two respondents commented on the estimate of 10 responses per respondent. Based on their collective experiences, they each typically issue between 20–50 subawards per year. Another respondent commented that they typically award between 1,000–1,200 subawards per year, and that this effort would require, at a minimum, an additional full-time position based on current estimates. One respondent commented that the estimate of 49,308 respondents, ten responses per respondent and 2 hours per response appears only to reflect a one-time estimation of the reporting burden on the prime without considering the subsequent efforts that would need to be made over the lifetime of an award by both prime and subawardees to maintain the accuracy of the information. They also add that the notice does not offer an estimate of the direct or indirect costs associated with collection, entry and maintenance of prime and subawardees' records. Given the time and funding required to meet the requirement in full, it will be difficult for U.S.-based international nongovernmental organizations (NGOs) with hundreds of subawards and limited budgets to meet the reporting deadline for each subrecipient without dedicating a substantial number of new, additional administrative personnel. One respondent also commented that the burden of the information collection requirements proposed in the notice will increase costs and strain the relationship between the U.S. Government and its recipients, and have a chilling effect on the partnerships between recipients and competent local subawardees who for security reasons will not want to be openly identified with the U.S. Government. One respondent requested that the burden estimate be re-evaluated.

Response: The number of respondents (49,308) is based on the total reported prime grant awardees reporting into USAspending.gov in FY 2009 (see Supporting Statement for Paperwork Reduction Act Submission, FFATA Subaward and Executive Compensation Reporting Requirements, footnote #1, p. 9, at *http://www.reginfo.gov*). Because these are new statutory requirements, the estimate of 10 responses per respondent and 2 hours per response were provided as GSA's best estimate based on available information. GSA will continue to review and revise these burden estimates as more information becomes available. GSA encourages the public to provide specific estimates with a supporting statement of how those estimates were calculated to further refine the burden estimates associated with this collection.

Executive Compensation and Foreign Assistance Programs. Four respondents commented that as foreign assistance programs are sometimes funded by a combination of multiple public and

privately generated resources and, therefore, executive salaries may not be fully supported by U.S. Federal funds, disclosure of executive compensation for prime awardees or subrecipients (U.S. and non-U.S. entities) may not be accurate in terms of relating to Federal expenditure of taxpayer dollars. It was noted that publication of such information could lead to confusion, mistrust and misunderstanding both here in the U.S. and in the subrecipient's home country. Furthermore, the provision and/or disclosure of such information from overseas subrecipients may violate applicable local privacy laws. One respondent added that the collection of sensitive personal information from subawardees in Federal databases undermines critical working relationships built on trust over decades with local communities, especially in unstable security environments. One respondent added that due to the possibility that executive compensation is not necessarily related in any manner to U.S. Government-funded activities, there is a likelihood that the executives' salaries will be incorrectly perceived as "funded" by the U.S. Government, creating a false association and resulting in unnecessary and possible physical harm, and jeopardizing the impartiality and safety of recipient staff working in the field. One respondent commented that the lack of a direct correlation between Federal expenditures and reporting executive compensation into a Federal database, together with the potential violation of privacy rights of foreign citizens, and the administrative burden imposed on recipients responsible for data input as both a recipient and an issuer of subawards is contrary to the stated purpose of the legislation—FFATA requires that data collection be in a manner that "minimizes the burdens imposed on Federal award recipients." One respondent strongly urged that GSA and OMB withdraw this notice until consultations can be had on less burdensome and more appropriate accountability procedures for international development and humanitarian relief nongovernmental organizations (NGOs) implementing Federal funding that will not increase the security risks for organizations and staff in the field. One respondent strongly urged OMB to delay the subaward and executive compensation reporting requirement until the rule-making process is completed; to complete all pilot program pre-requisites required by Public Law 109–282, report to the public and take all public comments into consideration; and not approve this emergency request until the completion of the rule-making process. Further, the respondent added that Public Law 109–282 requires the Director of OMB to commence a pilot program vis-à-vis the collection of subaward data. To their knowledge, this pilot program did not include organizations whose principal place of performance is outside the U.S. One respondent requested that further discussion be held with international organizations receiving Federal awards for overseas programs to ensure public disclosure does not result in unintended consequences. One respondent requested that OMB facilitate a community-wide discussion forum prior to implementation of these requirements.

Response: With some limited exceptions, the reporting requirements apply to all prime awardees of Federal grants including foreign prime recipients and foreign subawardees. Each action that obligates $25,000 or more in Federal funding would need to be separately reported. For new Federal grants or cooperative agreements as of October 1, 2010, if the initial award is $25,000 or more, reporting of subaward information is required. If the initial award is below $25,000 but subsequent award modifications result in a total award of $25,000 or more, the award is subject to the reporting requirements, as of the date the award exceeds $25,000. If the initial award exceeds $25,000 but funding is subsequently de-obligated such that the total award amount falls below $25,000, the award continues to be subject to the reporting requirements of the Transparency Act. If a single action obligates funding from multiple programs, the data submitted for that action would include the Catalog of Federal Domestic Assistance (CFDA) number for the program that is the predominant source of the Federal funding. If a program's funding is obligated by a separate amendment to the same subaward agreement that provides other programs' funding, however, then the data reported for each amendment to the agreement would include the CFDA number of the program that provided the funding for that amendment.

Nevertheless, GSA and OMB recognize the safety and security concerns regarding some types of foreign recipients and will provide additional guidance regarding the reporting of sensitive information. Any revisions to the requirements based on this guidance will be incorporated in a subsequent Paperwork Reduction Act submission for this information collection.

Regarding commencement of a pilot, an Assistance pilot was conducted in the fall of 2008. However, this pilot did not generate sufficient information on which to base (1) an operational model or project plan for how subaward information should be collected; or (2) an accurate assessment of the burden placed on award recipients.

Exemption for Primary Recipients from Collecting and Submitting Data on non U.S.-based Entities. Five comments were received. Two respondents commented that with respect to the collection of information on subrecipients and the need to ensure that this effort is not seen as an intelligence gathering, they recommended that OMB exempt primary recipients from having to collect and submit data on non U.S.-based entities. The principle of not applying policies designed for U.S. organizations on entities in other countries is longstanding with the Federal Government. Precedent for such exemption exists. For example, a class deviation was issued to USAID to exempt non-U.S. organizations from OMB A–110, and OMB exempted non-U.S. entities from the requirements in the Single Audit Act Amendments of 1996. One respondent added that this exemption was instituted whether these non-U.S. entities expend "Federal awards received either directly or indirectly as a subrecipient." The respondent requested that OMB review the U.S. District Court for the District of Columbia, Civil Action Case No. 06–0635 (PLF) that involved USAID's decision not to release the names of overseas partner organizations. Another respondent commented that in certain environments the public posting of data on overseas programs—even something as simple as listing the country in which the funds are being spent or the name of a local subrecipient partner—may further endanger those whom they are seeking to assist in their struggle for freedom and democracy, and would hinder the achievement of U.S. foreign and development assistance objectives. One respondent commented that requiring recipients to collect and input names and compensation of the executives of partner entities in a Federal database (even if not publicly accessible) will further blur the line of independence between development professionals, threatening those individuals employed by NGOs working in hostile environments by associating them with the information gathering activities of the U.S. Government.

Response: GSA and OMB recognize the safety and security concerns regarding some types of foreign recipients and will provide additional guidance regarding the reporting of sensitive information. Any revisions to the requirements based on this guidance will be incorporated in a subsequent Paperwork Reduction Act submission for this information collection.

Federal Agency Interaction. One comment was received. The respondent inquired with their cognizant Federal agency on the proposed new reporting requirements and received the following response: "At the present time we have not received any guidance from OMB. As such we are unable to inform the community on the new reporting requirements until we have final information/instruction/procedures identified by OMB. Our plans to inform the community will be based on the guidance we receive from OMB." The respondent stated that since their cognizant agency has not yet received guidance from OMB, it is premature to expect the recipient community to design processes and systems to be compliant with FFATA by October 1, 2010, and that OMB needs to provide Federal agencies and recipients with time to educate their respective communities on this new requirement. The respondent feels that providing emergency approval for this information collection will be doing disservice to the intent of FFATA and create additional burden on recipients and subrecipients.

Response: On August 27, 2010, OMB issued a memorandum and guidance regarding subaward reporting under the Transparency Act, Memorandum to Senior Accountable Officials, and is available at *http://www.whitehouse.gov/omb/open.* Specific guidance is also found in **Federal Register** Vol. 75, No. 177, September 14, 2010.

Purpose of the Information Collection Request. One respondent asked what this ICR really does and why was it an emergency new information collection requirement.

Response: Beginning October 1, 2010, this Paperwork Reduction Act submission directs compliance with FFATA to report prime and first-tier subaward data. Specifically, Federal agencies and prime awardees of grants will ensure disclosure of executive compensation of both prime and subawardees and subaward data. This is a new collection. The information collected will be used to make transparent the information about executive compensation (if applicable) for grants prime and subawardees and subaward information. While some information is currently publicly available on prime awardees, executive compensation of prime awardees and subawardees, as applicable, is not. In addition, this information collection will provide public access to information on grant subaward information, pursuant to the Transparency Act.

Data in USAspending.gov. One respondent stated there are inconsistencies in how Federal agencies are currently reporting data in USAspending.gov and that OMB needs to ensure that Federal agencies are correctly populating data.

Response: This comment is not related to this information collection and has been referred to the appropriate organization within GSA to respond.

OMB Guidance and the Regulations Issued by the FAR Councils for Contracts. One respondent expressed concern regarding a key difference in the OMB guidance for financial assistance awards and the regulations issued by the FAR Councils for contracts.

Response: This comment is not related to this information collection. The FAR Technology Team is considering the respondent's comments; appropriate responses will be included in the resulting second interim or final rule to FAR case 2008–039.

C. Annual Reporting Burden

Respondents: 49,308.
Responses per Respondent: 10.
Hours per Response: 2.
Total Burden Hours: 986,160.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence.

Dated: January 21, 2011.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2011–1752 Filed 1–26–11; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Public Input to Nominate Non-Federal Health and Health Care Data Sets and Applications for Listing on Healthdata.gov—OMB No. 0990–NEW—Immediate Office of the Secretary, Office of the Chief Technology Officer.

Abstract: The Department of Health and Human Services is promoting the use of health and health care datasets that are not specific to individual's personal health information to improve decision making by individuals, organizations, and governments through better understanding of the data. Federal agencies are making health indicator datasets (data that is not associated with any individuals) and tools available for use by the public through a web portal community known as healthdata.gov or *http://www.data.gov/health.* These datasets and tools are anticipated to benefit development of applications, web-based tools, and other electronic resources improve community action for health and health care. The development of tools, reference sets, dashboards, and electronic data visualization methods serve to provide context and understanding to complex health and health care data.

To broaden the type and amount of data available for these purposes, HHS is soliciting public input on nominations of non-Federal health and health data indicator datasets and applications using them to improve health and health data. For example, health indicator datasets representing surveys conducted by state government or private organizations may be considered as high-value datasets among researchers, applications developers, and others.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Health and Healthcare Dataset Application.	Data specialist/technologist	40	1	15/60	10

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–1762 Filed 1–26–11; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0278; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Federal-wide Assurance Forms—Extension—OMB No. 0990–0278—Assistant Secretary for Health, Office for Human Research Protections.

Abstract: The Office for Human Research Protections is requesting a three year extension of the Federal-wide Assurance (FWA). The FWA is designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS Regulations for the protection of human subjects at 45 CFR 46.103. The respondents are institutions engaged in human subjects research that is conducted or supported by HHS.

ESTIMATED ANNUALIZED BURDEN IN HOURS TABLE

Form name	Number of respondents	Number of responses per respondent	Hours per response	Response burden hours
Federal-wide Assurance (FWA)	11,000	2	30/60	11,000

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–1745 Filed 1–26–11; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0323; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed

information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Meeting Request Routing System for MedicalCountermeasures.gov—Extension—OMB No. 0990–0323—Office of the Assistant Secretary for Preparedness and Response (ASPR)—Office of the Biomedical Advanced Research and Development Authority (BARDA).

Abstract: In order to route product developers to the most appropriate personnel within the Department of Health and Human Services (HHS), HHS collects some basic information about the company's product through MedicalCountermeasures.gov. Using this information and a routing system that has been developed with input from participating agencies within HHS, including the Office of the Assistant Secretary for Preparedness and Response (ASPR), the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH), MedicalCountermeasures.gov routes the meeting request to the appropriate person within HHS. ASPR is requesting a three-year extension of this clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Meeting Request	Medical Countermeasure Developers.	225	1	8/60	30

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–1744 Filed 1–26–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, Office of the National Coordinator for Health Information Technology (ONC), HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of the IT Professionals in Health Care Workforce Program: University-Based Training—OMB No. 0090–NEW—Office of the National Coordinator for Health Information Technology (ONC).

Abstract: Currently, the Office of the National Coordinator for Health Information Technology's (ONC) Office of the Chief Scientist is soliciting comments on a series of data collection efforts for the Evaluation of the IT Professionals in Health Care Workforce Program: University-Based Training. The Workforce Program, created under Section 3016 of the HITECH Act, was intended to provide "assistance to institutions of higher education (or consortia thereof) to establish or expand health informatics education programs, including certification, undergraduate, and masters degree programs, for both health care and information technology students." The evaluation of the Workforce Program is a new information collection activity which will explore program challenges, provide critical formative feedback to the Workforce grantee institutions on their activities, and determine whether the Workforce Program overall was successful in helping to build a skilled workforce equipped to meet the heightened demands of the current environment. The data collection efforts include a web-based baseline survey and a web-based follow-up survey of university students.

This study will use surveys and other forms of data collection, such as focus groups and interviews, to assess the outcomes associated with participation in the program and to provide useful feedback to the Workforce grantee institutions for continuous improvement. The data collection efforts include a web-based baseline survey and a web-based follow-up survey of university students enrolled in ONC funded programs.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Web-based UBT Student Follow-up Survey.	Students enrolled in university-based Workforce program.	913	1	20/60	304
Web-based UBT Student Follow-up Survey.	Students enrolled in university-based Workforce program.	913	1	20/60	304

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Total	.....	.....	.....	.....	608

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–1743 Filed 1–26–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OCIIO–9978–N]

The Consumer Operated and Oriented Plan (CO–OP) Advisory Board, February 7, 2011

AGENCY: Office of Consumer Information and Insurance Oversight (OCIIO), HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 1322 of the Affordable Care Act entitled, "Federal Program to Assist Establishment and Operation of Nonprofit, Member-Run Health Insurance Issuers," this notice announces the second meeting of an advisory committee to the Secretary 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' (the Department's) 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.

DATES: *Meeting Date:* February 7, 2011 from 8 a.m. to 5 p.m., Eastern Standard Time (e.s.t.).

Deadline for Meeting Registration, Presentations and Comments: February 3, 2011, 5 p.m., e.s.t. *Deadline for Requesting Special Accommodations:* February 3, 2011, 5 p.m., e.s.t.

ADDRESSES: *Meeting Location:* Jurys Hotel (also known as Dupont 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 49888151.

Meeting Phone Access: To participate in this meeting via phone, please dial into the toll free phone number 1–888–299–4099, and provide the following code to the operator: VW82526.

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' (the Department's) 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, entitled "federal program to assist establishment and operation of nonprofit, member run health insurance issuers." 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://www.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 contact 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 contact 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: January 21, 2011.

Barbara Smith,

Associate Director, Consumer Operated and Oriented Plan Program, Office of Consumer Information and Insurance Oversight.

[FR Doc. 2011–1690 Filed 1–24–11; 4:15 pm]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Understanding Development Methods from Other Industries to Improve the Design of Consumer Health IT." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 28, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Understanding Development Methods from Other Industries to Improve the Design of Consumer Health IT

Consumer health information technology (IT) is the collection of tools, technologies, and artifacts that individuals can use to support their health care management tasks (Agarwal and Khuntia, 2009). Consumer health IT can play an important role in patients' efforts to coordinate their care and in ensuring that their personal values and interests help guide all clinical decisions. In order to accomplish this, consumer health IT solutions must take into account the particular needs of the consumer.

Useful consumer health IT products may enhance the quality of health care by empowering individual consumers to take a more active, effective, and collaborative role in their own personal health care. These products could provide the following capabilities to consumers:

- Information storage, archiving, and retrieval: The capabilities to search results of past examinations or lab tests, to interact with electronic versions of their health records, and identify when to seek health care services.
- Health monitoring: The capability to report data (*e.g.,* blood pressure, weight) from various locations.
- Information seeking and searching: The capability to interactively search for a wealth of health-related information.

Despite the potential power of consumer health IT, consumers have not adopted these technologies to the same degree that they have adopted technology products marketed from other consumer product industries. One reason for slow adoption is that the marketplace lacks robust tools that allow for the complexity and diversity of personal health information management (PHIM) practices. These types of practices are influenced by a variety of user and contextual factors, including demographics, personal attitudes, the goals and objectives of users, and the broad range of tasks that users wish to perform. There is no comprehensive list of problems that users encounter as they collect and reflect on personal information; this creates a barrier for design of consumer health IT tools.

New practices for the development of consumer-facing digital tools are emerging in a variety of industries. The success of information management tools in other industries offers much to be learned and applied to the health care field.

In July of 2009, AHRQ held the Building Bridges: Consumer Needs and the Design of Health Information Technology workshop. The workshop brought together leaders from multiple disciplines, including health informatics, health sciences, information science, consumer health IT, and human factors to discuss the diverse needs of different consumer groups in managing their personal health information, and how these needs could be incorporated into the design of consumer health IT solutions. The outcome of the workshop was a framework to further the design of consumer health IT systems, based on an understanding of practices that consumers use in their PHIM. The final report also included a set of recommendations for additional work in the health IT field related to research and industry and policy. Recognizing that design plays a key role in consumer use of personal tools, one research-related recommendation that resulted from the workshop was to investigate the application of design methodologies used in other industries to consumer health IT design.

This project has the following goals:

(1) To investigate the product development approaches, methods, and philosophies from a variety of industries in order to identify promising design and development techniques that will be most applicable to consumer health IT.

(2) To disseminate the project findings and recommendations to vendors and developers of consumer health IT products to assist them in developing health IT products that are consumer-focused. This study is being conducted by AHRQ through its contractors, Westat and the University of Wisconsin, pursuant to AHRQ's statutory authority to conduct and support research (1) on health care and on systems for the delivery of such care, including activities with respect to health care technologies, 42 U.S.C. 299a(a)(5), and (2) to advance the use of computer-based health records, 42 U.S.C. 299b–3(a)(6).

Method of Collection

To achieve the goals of this project the following activities will be implemented:

(1) Semi-structured interviews will be conducted with key informants identified as being experts in the design, management, and/or marketing of consumer products that are relevant to consumer health IT products. The purpose of these interviews is to gather information related to their experiences in developing consumer products, focusing on the design processes that their company uses, how they segment the market, the role of users in testing during the various product development phases, and the factors that affect the success of their product development approaches.

(2) The final report will be provided in PDF format for easy download from the AHRQ National Resource Center for Health IT Web site.

Information collected by the study will support the development of recommendations for those developers

and vendors who design, develop, and market consumer health IT products. The ultimate goal is to improve consumer health IT design and impact the adoption of this technology by consumers. This project will identify principles that led to the success of other consumer products, so that they can be evaluated for extension to the design and development of consumer health IT.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Semi-structured interviews will be conducted with no more than 15 individuals representing a variety of consumer-focused industries. The average burden will be 90 minutes per interview. The total annual burden is estimated to be 23 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondent's time to participate in this research. The total annual cost burden is estimated to be $1,770.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of technical experts	Number of responses per expert	Hours per response	Total burden hours
Semi-structured interviews	15	1	1.50	23
Total	15	1	1.50	23

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of technical experts	Total burden hours	Average hourly wage rate *	Total cost burden
Semi-structured interviews	15	23	$76.94	$1,770
Total	15	23	76.94	1,770

* Wage rates calculations were not possible using data from the U.S. Department of Labor, Bureau of Labor Statistics, National Occupational Employment and Wage Estimates for the United States, Occupational Employment Statistics (OES). The OES categories are too broad to determine a wage rate for a "Director of Product Development." Instead wage rate calculations are based on information from the Web site www.salary.com which has a tool providing a range of salaries for a variety of specific job titles. The salary for a "Product Development Director" generally ranges from $130,313 (25th percentile) to $189,771 (75th percentile) with an anticipated median of $160,042. Assuming 2,080 hours per year (40 hours per week), the resulting median hourly rate is $76.94.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the Federal Government for this research project. Since this project's activities will span a single year the total and annualized costs are identical. The estimated total cost is $409,388.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST * TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Administration and Coordination Activities	$91,673	$91,673
Technical Expert Panel	74,217	74,217
Environmental Scan and Grey Literature Review	58,413	58,413
OMB Submission Package	11,574	11,574
Interviews with Study Participants	102,018	102,018
Recommendations for Health IT Vendors and Developers	48,612	48,612
Dissemination Activities	14,325	14,325
508 Compliance	8,556	8,556
Total	409,388	409,388

* Costs are fully loaded including overhead, G&A and fees.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 14, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–1544 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0768]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Outcome Evaluation of the CDC National Prevention Information Network (NPIN, formerly known as the National AIDS Clearinghouse, OMB No. 0920–0768) –– Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NCHHSTP has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, viral hepatitis, sexually transmitted diseases (STDs), and tuberculosis (TB), as well as for community-based HIV prevention activities, syphilis, and TB elimination programs. NPIN serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, viral hepatitis, STDs, and TB, supporting NCHHSTP's mission to link Americans to prevention, education, and care services. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, viral hepatitis, STDs, and TB. NPIN provides the most comprehensive listing of HIV/AIDS, viral hepatitis, STD, and TB resources and services for prevention partners and the American public throughout the country and makes it available on the NPIN Web site. More than 29 million hits to the Web site are recorded annually.

To accomplish CDC's goal of consistently improving NPIN's Web site, and NPIN's other products and services, and meet the ever-growing needs of the prevention professionals, prevention partners, and the general public, it is necessary to collect feedback from visitors to the NPIN Web site and the users of NPIN's products and services on a on-going basis. Every effort has been made to minimize the burden on prevention professionals and the general public.

Evaluation Method and Recruitment

The evaluation will be accomplished by survey data collection from two groups—users of the NPIN Web site and users of NPIN products and services. Respondents for each survey will include representatives from government agencies, community-based organizations, advocacy organizations, various other organizations involved in the prevention and/or treatment of HIV/AIDS, STDs, TB, and/or viral hepatitis, and the general public. The NPIN Web site user survey will be conducted on an ongoing basis via the Web site and a blast e-mail reminder will be sent out annually. The NPIN products and services user survey will be conducted on a bi-annual basis with a blast email sent out every 6 months. When appropriate, NPIN will distribute the surveys at conferences and via social networks. Some of the NPIN Web site user surveys and the NPIN products and services surveys will be conducted over the phone as needed, which will be kept to an absolute minimum.

The information collected from the surveys is not intended to provide statistical data for publication. The purpose of this activity is solely to obtain user feedback that will help identify opportunities to improve the services and products provided to the public by NPIN and to ultimately allow NPIN to fulfill its mission.

Collecting the information described in this package allows NPIN to:

- Acquire accurate, up-to-date information from users of the NPIN Web site, and other products and services on a regular basis and in a timely manner.
- Identify the service needs of NPIN users and implement new features to meet those needs.
- Identify the strengths and weaknesses of the NPIN Web site, and others products and services.
- Collect data using a consistent format.
- Comply with requirements under the Public Health Service Act, Executive Order 12862, and GPRA.
- Provide the highest quality products and services to NPIN users.

Without this information collection, CDC will be hampered in successfully carrying out its mission of providing quality products and services to populations served. Failure to continue with our data collection effort would compromise efforts to meet the legislative requirement of being as responsive as possible to the public who consistently seek information about the prevention and treatment of HIV/AIDS, STDS, TB, and viral hepatitis. Moreover, it would diminish NPIN's value to the public in terms of usability and credibility as a comprehensive Federal information and education resource. The total estimated annualized burden hours are 342.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Responses per respondent	Average burden per response (in hours)
NPIN Web Site User	NPIN Web site User Survey	500	1	15/60
NPIN Products and Services User	NPIN Products and Services User Survey	500	2	13/60

Dated: January 20, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–1742 Filed 1–26–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee:

Times and Dates:

8 a.m.–6 p.m., February 23, 2011.

8 a.m.–5 p.m., February 24, 2011.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent "Oz" Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on: immunization of healthcare personnel; Japanese encephalitis vaccine; 13-valent pneumococcal conjugate vaccine; human papillomavirus (HPV) vaccines; human immunodeficiency virus (HIV); hepatitis B vaccine; pertussis vaccine; influenza; herpes zoster vaccine. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Stephanie B. Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, Georgia 30333, Telephone: (404) 639–8836, Fax: (404) 639–8905, e-mail *acip@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1737 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers of Excellence To Promote a Healthier Workforce, Request for Applications (RFA) OH11–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

8 a.m.–5 p.m., March 23, 2011 (Closed).

8 a.m.–5 p.m., March 24, 2011 (Closed).

8 a.m.–5 p.m., March 25, 2011 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: (703) 684–5900.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Centers of Excellence to Promote a Healthier Workforce, RFA OH11–001."

Contact Person for More Information: George Bockosh, PhD, Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop P05, Atlanta Georgia 30333, Telephone: (412) 833–0874.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1736 Filed 1–26–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Building Capacity for State-Based Occupational Health Surveillance, Program Announcement PAR 10–188, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates: 10 a.m.–11:30 a.m., February 15, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Building Capacity for State-Based Occupational Health Surveillance, PAR 10–188."

Contact Person for More Information: M. Chris Langub, PhD, Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E74, Atlanta, Georgia 30333, Telephone (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: January 19, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1734 Filed 1–26–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Educational Research Centers, Program Announcement PAR 10–217, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

8:30 a.m.–5 p.m., February 17, 2011 (Closed).

8:30 a.m.–5 p.m., February 18, 2011 (Closed).

Place: San Antonio Marriott Rivercenter, 101 Bowie Street, San Antonio, Texas 78205, Telephone (210) 223–1000.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Occupational Safety and Health Educational Research Centers, PAR 10–217."

There were site visits conducted at the University of Cincinnati, November 21–23, 2010; Mount Sinai School of Medicine, December 5–7, 2010; the University of Texas, Houston, December 15–17, 2010; and the University of South Florida, January 10–12, 2011 to advise and make recommendations to the Disease, Disability, and Injury Prevention and Control SEP: Occupational Safety and Health Educational Research Centers, PAR 10–217.

Contact Person for More Information: M. Chris Langub, PhD, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333, Telephone (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: January 19, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–1733 Filed 1–26–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Implementation, Systems and Outcome Evaluation of the Tribal and Low-Income Health Profession Opportunity Grants (HPOG).

OMB No.: New Collection.

Billing Accounting Code (BAC): 418409 (G99612l).

Description: The Administration for Children and Families (ACE) is proposing information collection activities as part of the Implementation, Systems and Outcome Evaluation of the Health Profession Opportunity Grants (HPOG). Through this information collection, ACF seeks to develop comprehensive management and performance reports on the HPOG initiative and design a feasible and reliable evaluation design to produce accurate evidence of the effect of HPOG on individuals and health job training programs systems.

The goals of the HPOG evaluation are to establish a performance management reporting process for HPOG, and design an evaluation of HPOG. Both goals require collecting information from HPOG grantees on a regular basis. The information collection proposed is an internet-based collection of information from HPOG grantees on (1) program participants: baseline characteristics, program participation and patterns, and participant outputs and outcomes; and (2) program designs and operating characteristics. The performance management system would collect information from grantees on their programs and participants on a bi-annual basis.

Respondents: Participant data to be collected by program staff in the 32 grantee organizations (higher education Institutions, workforce investment boards, private training institutions, and tribal entities).

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per responses	Total annual burden hours
HPOG program performance report	32	2	12	768
Estimated Total Annual Burden Hours				768

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 20, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–1688 Filed 1–26–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Project 1099.

OMB No.: 0970–0183.

Description: A voluntary program which provides State Child Support Enforcement agencies, upon their request, access to the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information is used to locate noncustodial parents and to verify income and employment.

Respondents: State IV–D programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
1099 Record specification	54	12	1.96	1,270.08
IRS Safeguarding Certification Letter	54	1	0.48	25.92
Estimated Total Annual Burden Hours				1,296

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACE Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 18, 2011.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–1532 Filed 1–26–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0544]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Participation in the Medical Device Fellowship Program

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.

DATES: Fax written comments on the collection of information by February 28, 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 emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0551. 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, *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.

Application for Participation in the Medical Device Fellowship Program—(OMB Control Number 0910–0551)—Extension

Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5 of the United States Code authorize Federal Agencies to rate applicants for Federal jobs. Collecting applications for the Medical Device Fellowship Program will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the Agency and lessen the likelihood of applications being misrouted within the Agency mail system. It will assist the Agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

In the **Federal Register** of October 27, 2010 (75 FR 66103), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

5 U.S.C. Section	FDA Form No.	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
1104, 1302, 3301, 3304, 3320, 3361, 3393, 3394	3608	250	1	250	1	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of inquiries that have been received concerning the program and the number of requests for application forms over the past 3 years.

Dated: January 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1760 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0042]

Agency Information Collection Activities: Proposed Collection; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

DATES: Submit either electronic or written comments on the collection of information by March 28, 2011.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850. 301–796–3792.
Elizabeth.Berbakos@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug (IND) Regulations—21 CFR Part 312 (OMB Control Number 0910–0014)—Extension

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in the FDA regulations "Investigational New Drug Application" in part 312 (21 CFR part 312). Part 312 implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) (the FD&C Act) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can do the following: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the

drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312:

Form FDA–1571—"Investigational New Drug Application"—A person who intends to conduct a clinical investigation submits this form to FDA. It includes the following information: (1) A cover sheet containing background information on the sponsor and investigator, (2) a table of contents, (3) an introductory statement and general investigational plan, (4) an investigator's brochure describing the drug substance, (5) a protocol for each planned study, (6) chemistry, manufacturing, and control information for each investigation, (7) pharmacology and toxicology information for each investigation, and (8) previous human experience with the investigational drug.

Form FDA–1572—"Investigator Statement"—Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

Reporting Requirements

21 CFR 312.2(e)—Requests for FDA advice on the applicability of part 312 to a planned clinical investigation.
21 CFR 312.8—Charging for investigational drugs under an IND.
21 CFR 312.10—Applications for waiver of requirements under part 312. As indicated in § 312.10(a), estimates for this requirement are included under §§ 312.23 and 312.31. In addition, separate requests under § 312.10 are estimated in table 1 of this document.
21 CFR 312.20(c)—Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
21 CFR 312.23—INDs (content and format).
21 CFR 312.23(a)(1)—Cover sheet FDA–1571.
21 CFR 312.23(a)(2) —Table of Contents.
21 CFR 312.23(a)(3)—Investigational plan for each planned study.
21 CFR 312.23(a)(5)—Investigator's brochure.
21 CFR 312.23(a)(6)—Protocols—Phase 1, 2, and 3.
21 CFR 312.23(a)(7)—Chemistry, manufacturing, and control information.
21 CFR 312.23(a)(7)(iv)(*a*),(*b*),(*c*)—A description of the drug substance, a list of all components, and any placebo used.
21 CFR 312.23(a)(7)(iv)(*d*)—Labeling: Copies of labels and labeling to be provided each investigator.
21 CFR 312.23(a)(7)(iv)(*e*)—Environmental impact analysis regarding drug manufacturing and use.
21 CFR 312.23(a)(8)—Pharmacological and toxicology information.
21 CFR 312.23(a)(9)—Previous human experience with the investigational drug.
21 CFR 312.23(a)(10)—Additional information.
21 CFR 312.23(a)(11)—Relevant information.
21 CFR 312.23(f)—Identification of exception from informed consent.
21 CFR 312.30—Protocol amendments.
21 CFR 312.30(a)—New protocol.
21 CFR 312.30(b)—Change in protocol.
21 CFR 312.30(c)—New investigator.
21 CFR 312.30(d)—Content and format.
21CFR 312.30(e)—Frequency.
21 CFR 312.31—Information amendments.
21CFR 312.31(b)—Content and format.
—Chemistry, toxicology, or technical information.
21 CFR 312.32—Safety reports.
21 CFR 312.32(c)(1)—Written reports to FDA and to investigators.
21 CFR 312.32(c)(2)—Telephone reports to FDA for fatal or life-threatening experience.
21 CFR 312.32(c)(3)—Format or frequency.
21 CFR 312.32(d)—Follow up submissions.
21 CFR 312.33—Annual reports.
21 CFR 312.33(a)—Individual study information.
21 CFR 312.33(b)—Summary information.
21 CFR 312.33(b)(1)—Adverse experiences.
21 CFR 312.33(b)(2)—Safety report summary.
21 CFR 312.33(b)(3)—List of fatalities and causes of death.
21 CFR 312.33(b)(4)—List of discontinuing subjects.
21 CFR 312.33(b)(5)—Drug action.
21 CFR 312.33(b)(6)—Preclinical studies and findings.
21 CFR 312.33(b)(7)—Significant changes.
21 CFR 312.33(c)—Next year general investigational plan.
21 CFR 312.33(d)—Brochure revision.
21 CFR.312.33(e)—Phase I protocol modifications.
21 CFR.312.33(f)—Foreign marketing developments.
21 CFR 312.38(b) and (c)—Notification of withdrawal of an IND.
21 CFR 312.42(e)—Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order.
21 CFR 312.44(c) and (d)—Opportunity for sponsor response to FDA when IND is terminated.
21 CFR 312.45(a) and (b)—Sponsor request for, or response to, inactive status determination of an IND.
21 CFR 312.47(b)—"End-of-Phase 2" meetings and "Pre-NDA" meetings.
21 CFR 312.53(c)—Investigator information.
Investigator report (Form FDA–1572) and narrative; investigator's background information; Phase 1 outline of planned investigation and Phase 2 outline of study protocol.
21 CFR 312.54(a) and (b)—Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
21 CFR 312.55(b)—Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only "new observations" are estimated under this section; investigator brochures are included under § 312.23.
21 CFR 312.56(b),(c), and (d)—Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
21 CFR 312.58(a)—Sponsor's submission of records to FDA on request.
21 CFR 312.64—Investigator reports to the sponsor.
21 CFR 312.64(a)—Progress reports.
21 CFR 312.64(b)—Safety reports.
21 CFR 312.64(c)—Final reports.
21 CFR 312.66—Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
21 CFR 312.70(a)—Investigator disqualification; opportunity to respond to FDA.
21 CFR 312.83—Sponsor submission of treatment protocol. Estimates for this requirement are included under § 312.320.
21 CFR 312.85—Sponsors conducting Phase 4 studies. Estimates for this requirement are included under § 312.23 in 0910–0014, and §§ 314.50, 314.70, and 314.81 in 0910–0001.
21 CFR 312.110(b)—Request to export an investigational drug.
21 CFR 312.120—Submissions related to foreign clinical studies not conducted under an IND.
21 CFR 312.130(d)—Request for disclosable information for investigations involving an exception from informed consent under § 50.24.
21 CFR 312.310(b); 312.305(b)—Submissions related to expanded access and treatment of an individual patient.
21 CFR 312.310(d)—Submissions related to emergency use of an investigational new drug.
21 CFR 312.315(c); 312.305(b)—Submissions related to expanded access and treatment of an intermediate size patient population.
21 CFR 312.320—Submissions related to treatment IND or treatment protocol.

Recordkeeping Requirements

21 CFR 312.52(a)—Transfer of obligations to a contract research organization.
21 CFR 312.57—Sponsor recordkeeping.
21 CFR 312.59—Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
21 CFR 312.62(a)—Investigator recordkeeping of disposition of drugs.
21 CFR 312.62(b)—Investigator recordkeeping of case histories of individuals.
21 CFR 312.120(d)—Recordkeeping requirements for submissions related to foreign clinical studies not conducted under an IND. Estimates for this requirement are included under § 312.57.
21 CFR 312.160(a)(3)—Records maintenance: shipment of drugs for investigational use in laboratory research animals or in vitro tests.
21 CFR 312.160(c)—Shipper records of alternative disposition of unused drugs.

In the tables in this document, the estimates for "No. of Respondents," "Annual Frequency per Response," and "Total Annual Responses" were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2007 and from other sources familiar with the number of submissions received under part 312. The estimates for "Hours per Response" were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
312.2(e)	455	1.03	469	24	11,256
312.8	30	1.13	34	48	1,632
312.10	4	1	4	10	40
312.23(a) through (f)	2,496	1.26	3,145	1,600	5,032,000
312.30(a) through (e)	2,030	8.91	18,087	284	5,136,708
312.31 (b)	153	2.97	454	100	45,400
312.32(c) and (d)	985	23.06	22,714	32	726,848
312.33(a) through (f)	2,564	2.34	6,000	360	2,160,000
312.38(b) and (c)	654	1.34	876	28	24,528
312.42(e)	149	1.10	164	284	46,576
312.44(c) and (d)	44	1	44	16	704
312.45(a) and (b)	254	1.43	363	12	4,356
312.47(b)	281	1.8	506	160	80,960
312.53(c)	21,194	1	21,194	80	1,695,520
312.54(a) and (b)	0	0	0	48	0
312.55(b)	985	2,306	2,271,410	48	109,027,680
312.56(b), (c), and (d)	18	1	18	80	1,440
312.58(a)	91	4.10	373	8	2,984
312.64	31,791	1	31,791	24	762,984
312.70(a)	4	1	4	40	160
312.110(b)	23	18.26	420	75	31,500
312.120	115	5	575	32	18,400
312.130(d)	3	1	3	8	24
312.310(b) and 312.305(b)	988	1	988	8	7,904
312.310(d)	525	1.23	646	16	10,336
312.315(c) and 312.305(b)	68	1	68	120	8,160
312.320	9	1.11	10	300	3,000
Total					124,841,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS [1]

21 CFR Section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
312.52(a)	335	1.5	503	2	1,006
312.57	75	485.28	36,396	100	3,639,600
312.62(a)	14,732	1	14,732	40	589,280
312.62(b)	147,320	1	147,320	40	5,892,800
312.160(a)(3)	547	1.4	766	.5	383
312.160(c)	547	1.4	766	.5	383
Total					10,123,452

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
312.7(d)	41	1.4	57	24	1,368
312.23(a) through (f) and 312.120(b), (c)(2), and (c)(3)	433	1.3	563	1,808	1,017,904
312.30(a) through (e)	590	6.8	4,012	284	1,139,408
312.31(b)	263	29.3	7,706	100	770,600
312.32(c) and (d) and 312.56(c)	294	13.7	4,028	32	128,896
312.33(a) through (f) and 312.56(c)	647	2.3	1,488	360	535,680
312.35(a) and (b)	1	1	1	300	300
312.36	6	1	6	16	96

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS [1]—Continued

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
312.38(b) and (c)	117	1.3	152	28	4,256
312.42(e)	74	1.5	111	284	31,524
312.44(c) and (d)	17	1.1	19	16	304
312.45(a) and (b)	60	1.8	108	12	1,296
312.47(b)	43	1.5	65	160	10,400
312.53(c)	348	6.6	2,297	80	183,760
312.54(a) and (b)	1	1	1	48	48
312.55(b)	138	2.5	345	48	16,560
312.56(b) and (d)	14	1.6	22	80	1,760
312.58(a)	8	1	8	8	64
312.64(a) through (d)	6,003	3.5	21,010	24	504,240
312.70(a)	6	1	6	40	240
312.110(b)	21	1	21	75	1,575
312.130(d)	1	1	1	8	8
Total					4,350,287

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS [1]

21 CFR Section	Number of record-keepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
312.52(a)	139	1.4	195	2	390
312.57(a) and (b)	433	2.6	1,126	100	112,600
312.62(a)	5,570	1	5,570	40	222,800
312.62(b)	5,570	10	55,700	40	2,228,000
312.160(a)(3)	146	1.4	204	0.5	102
312.160(c)	146	1.4	204	0.5	102
Total					2,563,994

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1758 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0084]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Pretesting of Tobacco Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitle "Pretesting of Tobacco Communications" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *e-mail: Jonnalynn.Capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 2010 (75 FR 47600), 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 0910–0674. The approval expires on January 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: January 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1757 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0250]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Approval of Medical Devices" 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, *Daniel.Gittleson@FDA.HHS.GOV.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 24, 2010

(75 FR 58396), 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 0910–0231. 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: January 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1756 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0357]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 2010 (75 FR 57962), 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 0910–0466. The approval expires on January 31, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1755 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0143; (formerly Docket No. FDA–2008–D–0128)]

Drug-Induced Liver Injury: Are We Ready to Look?; Public Conference; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference entitled "Drug-Induced Liver Injury: Are We Ready to Look?" The public conference will be cosponsored with the American Association for the Study of Liver Diseases (AASLD) and the Pharmaceutical and Research Manufacturers of America to discuss and debate issues regarding drug-induced liver injury (DILI). The purpose of this conference is to consider the effect of the recommendations in the guidance for industry entitled "Drug-Induced Liver Injury: Premarketing Clinical Evaluation" since its publication in July 2009 and to seek suggestions for future revision.

DATES: The public conference will be held on March 23, 2011, from 8 a.m. to 6 p.m. and March 24, 2011, from 8 a.m. until 3:30 p.m. Submit either electronic or written comments on Agency guidance at any time.

ADDRESSES: The conference will take place at the National Labor College, 10000 New Hampshire Ave., Silver Spring, MD 20993.

Submit written requests for single copies of the 2009 guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the 2009 guidance document.

Submit electronic comments on the 2009 guidance and the issues and questions presented at the conference to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4307, Silver Spring, MD 20993–0002, 301–796–0518, e-mail: *lana.pauls@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2009, FDA made available a guidance for industry entitled "Drug-Induced Liver Injury: Premarketing Clinical Evaluation" (*see* 74 FR 38035, July 30, 2009). The 2009 guidance explains that DILI has been the most frequent cause of safety-related drug marketing withdrawals for the past 50 years, and that hepatoxicity has limited the use of many drugs that have been approved and prevented the approval of others. It discusses methods of detecting DILI by periodic tests of serum enzyme activities and bilirubin concentration elevations, and how those laboratory tests might change over time, along with symptoms and physical findings, to allow estimation of severity of the injury. It suggests some rules for stopping or interrupting drug treatment, and the need to obtain additional clinical information to estimate the likelihood of the true cause. Public comments on the draft guidance were sought in 2007 and 2008, and those comments were taken into consideration when issuing the final guidance in July 2009.

II. The Public Conference

A. Why are we holding this conference?

The purpose of the 2011 conference is to discuss the most current information and thinking about how drugs cause liver injury and why certain individuals are more susceptible than others, combining views of both basic science and clinical experts, and selecting for specific debate and discussion issues such as:

- Liver injury and dysfunction in patients,
- Liver reaction to injury,
- Biomarkers and predictors of liver injury and dysfunction, and
- Postmarketing DILI.

B. Is there a fee and how do I register for the conference?

A registration fee will be charged to attendees other than invited speakers to help defray the costs of rental of the meeting spaces, meals and snacks provided, and if possible, to cover travel costs incurred by invited academic (but not Government or industry) speakers, and other costs. The fee for the 2-day meeting is $500 for industry registrants and $250 for Federal Government and academic registrants. Registration fees will be waived for invited speakers and moderators.

The registration process will be handled by AASLD, a not-for-profit organization with extensive experience in planning, organizing, and executing educational meetings.

Additional information on the conference, program, and registration procedures is available on the Internet at *http://www.aasld.org* (go to Conferences and Education, Meetings and Conferences), and also at *http://www.fda.gov* by typing into the search box "liver toxicity." (FDA has verified the AASLD Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Transcripts: The presentations and discussions will be transcribed and published on the Internet at *http://www.aasld.org* for public availability after minor editing by the organizers of the meeting (Lana Pauls and John Senior). Please be advised that as soon as a transcript is available, it will also be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the guidance and the issues and questions presented at the conference. 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 notice. Received comments may be seen in the Division of Dockets Management between 9 a.m. Monday through 4 p.m. Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: January 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1759 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0046]

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is announcing an invitation for participation in its Regulatory Site Visit Training Program (RSVP). This training program is intended to give CBER regulatory review, compliance, and other relevant staff an opportunity to visit biologics facilities. These visits are intended to allow CBER staff to directly observe routine manufacturing practices and to give CBER staff a better understanding of the biologics industry, including its challenges and operations. The purpose of this document is to invite biologics facilities to contact CBER for more information if they are interested in participating in this program.

DATES: Submit either an electronic or written request for participation in this program by February 28, 2011. The request should include a description of your facility relative to products regulated by CBER. Please specify the physical address(es) of the site(s) you are offering.

ADDRESSES: If your biologics facility is interested in offering a site visit, submit either an electronic request to *http://www.regulations.gov* or a written request to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. If you previously responded to earlier requests to participate in this program and you continue to be interested in participating, please renew your request through a submission to the Division of Dockets Management.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Henderson, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, *e-mail: matt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products including blood and blood products, vaccines, and cellular, tissue, and gene therapies. CBER is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness, and availability of biological products to patients. To support this primary goal, CBER has initiated various training and development programs, including programs to further enhance performance of its compliance staff, regulatory review staff, and other relevant staff. CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff with a better understanding of the biologics industry and its operations. Further, CBER seeks to enhance: (1) Its understanding of current industry practices and regulatory impacts and needs and (2) communication between CBER staff and industry. CBER initiated its RSVP in 2005. Through these annual notices, CBER is requesting those firms that have previously applied and are still interested in participating, to reaffirm their interest. CBER is also requesting new interested parties to apply.

II. RSVP

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the facility, small groups of CBER staff may observe operations of biologics establishments, including for example, blood and tissue establishments. The visits may include the following: (1) Packaging facilities, (2) quality control and pathology/toxicology laboratories, and (3) regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but are meant to improve mutual understanding and to provide an

avenue for open dialogue between the biologics industry and CBER.

B. Site Selection

CBER will be responsible for all travel expenses associated with the site visits. Therefore, selection of potential facilities will be based on the coordination of CBER's priorities for staff training as well as the limited available resources for this program. In addition to logistical and other resource factors to consider, a key element of site selection is a successful compliance record with FDA or another Agency with which we have a memorandum of understanding. If a site visit also involves a visit to a separate physical location of another firm under contract to the applicant, the other firm also needs to agree to participate in the program, as well as have a satisfactory compliance history.

III. Requests for Participation

Identify requests for participation with the docket number found in the brackets in the heading of this document. Received requests are available for public examination in the Division of Dockets Management (*see* **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1753 Filed 1–26–11; 8:45 am]

BILLING CODE 4160–01–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.

Allele Specific shRNA for Nanog, and Its Use To Treat Cancer

Description of Technology: Cancer stem cells are currently thought to be major participants in resistance to radiation therapy and chemotherapy; they are also thought to drive the spread of cancer through metastasis. It has been postulated that genes involved in early embryogenesis, primarily transcription factor Nanog but also Oct4 and SOX2, may be reactivated to maintain the properties of cancer stem cells, any treatment that inhibits such genes may therefore inhibit the progression of cancer and lead to improved survival and other clinical outcomes.

The NIH investigators discovered that the expression of NanogP8, a pseudogene of Nanog, is upregulated in human colorectal cancer spheroids formed in serum-free medium. NanogP8 has also been reported to be upregulated in human prostate cancer and glioblastomas. An inhibitory RNA molecule was identified by the investigators to knock down expression of NanogP8, without interfering with expression of Nanog. The discovery may improve the safety of a shRNA-based gene therapy and improve its chances for acceptance as a clinical therapy.

Applications and Market:

• This invention may provide a new therapy to target colorectal cancer as well as a few other cancers for treatment.

• Cancer is the second leading cause of death, and colorectal cancer is the fourth most common form of cancer in the U.S. Development of more effective cancer therapies is always in need.

Development Status: Pre-clinical stage of development.

Inventors: John M. Jessup and Jingyu Zhang (NCI).

Patent Status: U.S. Provisional Application No. 61/420,214 filed 06 Dec 2010 (HHS Reference No. E–294–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this specific gene therapy to target colorectal and other human carcinomas. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Compositions and Methods for Controlling Neurotropic Viral Pathogenesis by Micro-RNA Targeting

Description of Technology: There are more than seventy (70) single-stranded, positive-sense RNA viruses in the arthropod-borne flavivirus genus of the Flaviviridae family, many of which are important human pathogens that cause a devastating and often fatal neuroinfection. Flaviviruses are transmitted in nature to various mammals and birds through the bite of an infected mosquito or tick; they are endemic in many regions of the world and include mosquito-borne yellow fever (YFV), Japanese encephalitis (JEV), West Nile (WNV), St. Louis encephalitis (SLEV), dengue viruses (DEN) and the tick-borne encephalitis viruses (TBEV). During the past two decades, both mosquito-borne and tick-borne flaviviruses have emerged in new geographic areas of the world where previously they were not endemic and have caused outbreaks of diseases in humans and domestic animals.

Long-term experience with the only two successful live attenuated flavivirus vaccines has demonstrated that live attenuated virus vaccines are an efficient approach to prevent diseases caused by virulent flaviviruses because, in most cases, just a single dose of the vaccine provides a long-lasting protective immunity in humans that mimics the immune response following natural infection.

This application claims recombinant attenuated neurotropic flaviviruses comprising nucleic acid sequences complementary to the target sequences of microRNAs. The application also claims live attenuated chimeric flaviviruses, where the first flavivirus is a different flavivirus from the second flavivirus.

Applications:

• Vaccines for the prevention of multiple flavivirus infections.

• Use of human clinically-tested live attenuated dengue vector.

Advantages:

• Novel vaccine candidate.

• Rapid production time.

• Low manufacturing cost.

Development Status: Preclinical studies have been conducted by the inventors.

Inventors: Alexander Pletnev and Brian Heiss (NIAID).

Patent Status: U.S. Provisional Application No. 61/455,261 filed 14 Oct 2010 (HHS Reference No. E–197–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Method for Detection and Quantification of PLK1 Expression and Activity

Description of Technology: Polo-like kinase 1 (Plk1) plays a role in the regulation of the cell cycle and control of cellular proliferation. Because Plk1 is associated with neoplastic transformation of human cells, expression of this protein has been proposed as a prognostic marker for many types of malignancies. In mammalian cells, four Plks exist, but their expression patterns and functions appear to be distinct from each other. Available for licensing is a Plk1 ELISA assay using peptide substrates that are specific for Plk1, in that they are phosphorylated and bound by Plk1, but not by the related polo kinases Plk2, Plk3 and Plk4.

By exploiting a unique Plk1-dependent phosphorylation and binding property, an easy and reliable ELISA assay has been developed to quantify Plk1 expression levels and kinase activity. With this highly sensitive assay, Plk1 activity can be measured with 2–20 microgram of total lysates without immunoprecipitation or purification steps. Since deregulated Plk1 expression has been suggested as a prognostic marker for a wide range of human malignancies, this assay may provide an innovative tool for assessing the predisposition for cancer development, monitoring cancer progression, and estimating the prognosis of various types of cancer patients.

Applications:

• Optimized PBIP1 polypeptides, a natural substrate of Plk1, with enhanced specificity and sensitivity over the native PBIP1 sequence.

• ELISA assay to quantify Plk1 expression and kinase activity.

Advantages:

• Rapid, highly sensitive assay that requires lower amounts of starting material than conventional immunoprecipitation assays.

• Assay that is selective for Plk1.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

• Cancer is the second leading cause of death in United States.

• An estimated 1,529,560 new cancer cases and 569,490 deaths from cancer occurred in the United States in 2010.

• *In vitro* cancer diagnostic market will be worth an estimated $8 billion by the end of 2012.

Inventors: Kyung S. Lee and Jung-Eun Park (NCI).

Publications:

1. JE Park *et al.* Direct quantification of polo-like kinase 1 activity in cells and tissues using a highly sensitive and specific ELISA assay. Proc Natl Acad Sci USA. 2009 Feb 10;106(6):1725–1730. [PubMed: 19181852]

2. KS Lee *et al.* Mechanisms of mammalian polo-like kinase 1 (Plk1) localization: self-versus non-self-priming. Cell Cycle 2008 Jan;7(2):141–145. [PubMed: 18216497]

3. KS Lee *et al.* Self-regulated mechanism of Plk1 localization to kinetochores: lessons from the Plk1–PBIP1 interaction. Cell Div. 2008 Jan 23;3:4. [PubMed: 18215321]

4. YH Kang *et al.* Self-regulated Plk1 recruitment to kinetochores by the Plk1–PBIP1 interaction is critical for proper chromosome segregation. Mol Cell. 2006 Nov 3;24(3):409–422. [PubMed: 17081991]

Patent Status: U.S. Patent Application No. 12/992,887 filed 15 Nov 2010 (HHS Reference No. E–091–2008/0–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Metabolism, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the PLK1 ELISA assay described above. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Immunoglobulin-Producing Mouse Plasmacytomas

Description of Technology: Overall cancer costs in the U.S. in 2006 are estimated at $206.3 billion. The World Health Organization predicts upwards of 15 million new cancer cases globally by 2020. There remains a significant unmet need for new therapies to treat cancer, as well as a need to further understand the role of the immune system in cancer susceptibility.

Available for licensing are isolated immunoglobulin-producing mouse plasmacytomas (PCTs). Each tumor produces only one species of monoclonal immunoglobulin (Ig). When transplanted into mice, these plasma cell tumors will continue to produce only the same unique Ig molecules. Some (5–10%) of the Igs specifically bind antigens.

Applications:

• To understand the underlying process of neoplastic development.

• To identify the genes that control tumor susceptibility and resistance.

• To investigate the antigen binding activities of myeloma proteins.

• To study Ig synthesis.

• To classify the various different classes of Igs (IgG, IgA, IgM).

• As a fusion partner to make monoclonal antibodies.

Advantages: Provide an unlimited source of pure monoclonal Ig molecules.

Inventor: Michael Potter (NCI).

Relevant Publications:

1. Potter M, Fahey JL, Pilgrim HI. Abnormal serum protein and bone destruction and transmissible mouse plasma cell neoplasm (multiple myeloma). Proc Soc Exp Biol Med. 1957 Feb;94(2):327–333.

2. Nathans D, Fahey JL, Potter M. The formation of myeloma protein by a mouse plasma cell tumor. J Exp Med. 1958 Jul 1;108(1):121–130. [PubMed: 13549645]

3. Potter M, Boyce CR. Induction of plasma cell neoplasms in strain BALB/c mice with mineral oil and mineral oil adjuvants. Nature. 1962 Mar 17;193:1086–1087.

4. Andersen PN, Potter M. Induction of plasma cell tumors in BALB/c mice with 2,6,10,14-tetramethylpentadecane (pristane). Nature. 1969 Jun 7;222(5197):994–995.

Patent Status: HHS Reference No. E–277–2001/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for biological materials licensing only.

Licensing Contact: Patrick P. McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

Dated: January 19, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–1669 Filed 1–26–11; 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 Computer Program To Predict Optimal Sites on Protein Sequences for Production of Peptide-Directed Antibodies (NHLBI AbDesigner)

Description of Technology: The invention offered for licensing is a computer program called "NHLBI AbDesigner" that allows the user to input a unique identifier for an individual mammalian protein to be analyzed in order to find out what short peptides in its amino sequence would most likely result in a strong immunogenic response when injected into a research animal. The software displays standard predictors of immunogenicity and antigenicity in easy-to-view heat maps and also allows users to choose peptides most likely to elicit antibodies that are specific to said protein. The computer code is written in Java and would be made available in the form of jar files.

For additional information please refer to: *https://dirweb.nhlbi.nih.gov/labs/LKEM_G/LKEM/Pages/Antibodydesignsoftware.aspx.*

Applications:

• Design and production of antibodies for research or therapeutic purposes.

• Bioinformatic analysis of protein structure and functions.

• Analysis and interpretation of proteomic data.

Advantages: This program allows the user to identify tradeoffs in the decision making process by aligning various types of information with the amino acid sequence, constituting an improvement over present ad hoc methods of accumulating and relating different type of information regarding immunogenicity, uniqueness of sequences, conservation of sequences, and presence of post-translational modifications.

Development Status: Fully developed.

Inventors: Mark A. Knepper (NHLBI) *et al.*

Patent Status: HHS Reference No. E–251–2010/0—Software. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contacts:

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*.

• Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The NHLBI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Brian Bailey, Ph.D. at 301–594–4094 or *bbailey@mail.nih.gov* for more information.

Nanoparticle Probes and Mid-Infrared Chemical Imaging for DNA Microarray Detection

Description of Technology: The technology offered for licensing is a faster, more flexible, cost-effective microarray visualization. The invention describes and claims the mid-infrared chemical imaging (IRCI) to detect nanostructure-based DNA microarrays, which can be utilized in the life science research arena to examine gene expression and single nucleotide polymorphisms (SNPs), as well as to characterize entire genomes. The IRCI improves the signal-to-noise ratio (SNR) obtained for hybridized microarrayed spots compared to the commonly used fluorescence detection method. The improved method of this invention results in the sensitivity and precision for detecting pathogenic bacterial genes and can be utilized to detect low-expressing genes which cannot be identified by fluorescent-based DNA microarrays. Furthermore, the automated IRCI systems can also be fabricated for the dedicated detection of other (protein, tissue, biochemical, or chemical) microarrays.

Applications: DNA microarrays can be applied to the areas of environmental sciences, agriculture research, bio-defense, diagnostics, forensics, pharmacogenomics and toxicogenomics.

Advantages: The invention provides a cost-effective, faster, more flexible, and less labor intensive microarray technology.

Development Status:

• The invention is fully developed.

• Need to develop a commercialized kit and protocol.

Inventors: Magdi M. Mossoba, et al. (FDA).

Patent Status: U.S. Provisional Application No. 61/395,635 filed 15 Oct 2010 (HHS Reference No. E–127–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov*.

Fluoroquinolone Derivatives as Inhibitors of Human Tyrosyl-DNA Phosphodiesterase (Tdp1)

Description of Technology: Chemotherapy can provide therapeutic benefits in many cancer patients, but it often ultimately fails to cure the disease since cancer cells can become resistant to the chemotherapeutic agent. To overcome these limitations, additional strategies are needed to restore or amplify the effect of antitumor agents. Tyrosyl-DNA phosphodiesterase 1 (Tdp1) is a DNA repair enzyme involved in the repair of DNA lesions created when the activity of the Topoisomerase 1 (Top1) is inhibited. Tdp1 has been regarded as a potential therapeutic co-target of Top1 in that it seemingly counteracts the effects of Top1 inhibitors, such as camptothecin. By reducing the repair of Top1-DNA lesions, Tdp1 inhibitors have the potential to augment the anticancer activity of Top1 inhibitors.

The NIH investigators discovered fluoroquinolone derivatives as specific Tdp1 inhibitors that could potentiate the pharmacological action of Top1 inhibitors, which are currently used in cancer treatment. The instant invention discloses a method of treating cancers with a therapeutically effective amount of a Top1 inhibitor, and a fluoroquinolone derivative that inhibits Tdp1 activity.

Applications and Market:

• This invention may provide a new combination of drugs to target various cancers for treatment.

• Cancer is the second leading cause of death in the U.S. The National Cancer Institute estimates the overall annual costs for cancer in the U.S. at $107 billion; development of more effective cancer therapies is always in high demand.

Development Status: Pre-clinical stage of development.

Inventors: Yves G. Pommier, Christophe R. Marchand, Thomas S. Dexheimer (NCI), *et al.*

Related Publications:

1. Dexheimer TS, Antony S, Marchand C, Pommier Y. Tyrosyl-DNA phosphodiesterase as a target for

anticancer therapy. Anticancer Agents Med Chem. 2008 May;8(4):381–389. [PubMed: 18473723]

2. Dexheimer TS, *et al.* 4-Pregnen-21-ol-3,20-dione-21-(4-bromobenzenesulfonate) and related novel steroid derivatives as tyrosyl-DNA phosphodiesterase (Tdp1) inhibitors. J Med Chem. 2009 Nov 26;52(22):7122–7131. [PubMed: 19883083]

3. Marchand C, *et al.* Identification of phosphotyrosine mimetic inhibitors of human tyrosyl-DNA phosphodiesterase I by a novel AlphaScreen high-throughput assay. Mol Cancer Ther. 2009 Jan;8(1):240–248. [PubMed: 19139134]

Patent Status: U.S. Provisional Application No. 61/407,325 filed 07 Oct 2010 (HHS Reference No. E–199–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, PhD; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Molecular Pharmacology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize tyrosyl-DNA-phosphodiesterase inhibitors. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

HMG3 for Detecting and Treating Diabetes

Description of Technology: This invention relates to the use of High Mobility Group N 3 (HMGN3) as a marker for detecting diabetes and as a therapeutic agent for treating diabetes.

Diabetes is disabling largely because commonly available anti-diabetic drugs do not adequately control blood sugar levels to completely prevent the occurrence of high and low blood sugar levels. Inappropriate blood sugar levels can be toxic and can cause long-term complications including renopathy, retinopathy, neuropathy and peripheral vascular disease. Those with diabetes are also at risk for developing related conditions such as obesity, hypertension, heart disease and hyperlipidemia.

This invention relates to the discovery that reduced expression of HMGN3 (also called TRIP7) gives rise to elevated blood glucose levels, reduced serum insulin levels and impaired glucose tolerance.

Applications: Diagnostic and therapeutic for diabetes.

Development Status: Early stage.

Inventors: Michael Bustin *et al.* (NCI).

Related Publication: Ueda T, Furusawa T, Kurahashi T, Tessarollo L, Bustin M. The nucleosome binding protein HMGN3 modulates the transcription profile of pancreatic beta cells and affects insulin secretion. Mol Cell Biol. 2009 Oct;29(19):5264–5276. [PubMed: 19651901]

Patent Status: PCT Application No. PCT/US2009/039406 filed 03 Apr 2009 (HHS Reference No. E–338–2008/0–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 Cancer Institute, Laboratory of Metabolism, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HMGN and related chromatin-binding proteins in the function of pancreatic islet cells. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Molecular Motors Powered by Proteins

Description of Technology: The technology available for licensing and commercial development relates to molecular motors powered by proteins. Some implementations describe a molecular motor in which multiple concentric cylinders or nested cones rotate around a common longitudinal axis. Opposing complementary surfaces of the cylinders or cones are coated with complementary motor protein pairs, such as actin and myosin. The actin and myosin interact with one another in the presence of ATP to rotate the cylinders or cones relative to one another, and this rotational energy is harnessed to produce work. Speed of movement is controlled by the concentration of ATP and the number of nested cylinders or cones. The length of the cylinders or cones can also be used to control the power generated by the motor.

Another configuration forms the motor out of a set of stacked disks, much like CDs on a spindle. The advantage of this form is extreme simplicity of construction compared to the nested cylinders or cones. In yet another configuration, which has aspects of both of the previous forms, the surfaces are broken into annular rings in order to overcome that the inner surfaces rotate at a different rate than the outer surfaces. This belt form may ultimately be used in molecular manufacturing.

Applications:

- Supplying power to prosthetic implants and other medical devices without external power sources.
- Many other applications that could use a motor in other biotechnological areas, in addition to the medical applications.
- The inventions can be implemented on either a microscopic or macroscopic scale.

Development Status: Very early stage of development.

Inventors: Thomas D. Schneider and Ilya G. Lyakhov (NCI).

Relevant Publications: "Molecular Motor", Patent Publication Nos. WO 2001/009181 A1, published 02/08/2001; CA 2380611A1, published 02/08/2001; AU 6616600A, published 02/19/2001; EP 1204680A1, published 05/15/2002; and U.S. 20020083710, published 07/04/2002.

Patent Status:

- HHS Reference No. E–018–1999/0—International Application Number PCT/US 2000/20925 filed 31 Jul 2000; granted Application AU 2002/18688 B2, and the corresponding European and Canadian applications being prosecuted, all entitled "Molecular Motor"
- HHS Reference No. E–018–1999/1—U.S. Patent No. 7,349,834 issued 25 Mar 2008, and U.S. Patent Application No. 12/011,239 filed 24 Jan 2008, both entitled "Molecular Motor"

Licensing Status: Available for licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the Molecular Rotation Engine. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: January 19, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–1671 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Neurodegenerative Disorders and ADHD.

Date: February 3–4, 2011.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1675 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention and Health Behavior.

Date: February 1, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha M. Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Research-Practice Partnership SEP.

Date: February 2, 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: Melinda Jenkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: January 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1678 Filed 1–26–11; 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 Nursing and Related Clinical Sciences Study Section, February 8, 2011, 8 a.m. to February 9, 2011, 5 p.m., Renaissance Washington, DC Downtown Hotel, 999 Ninth Street, NW., Washington, DC 20001 which was published in the **Federal Register** on January 10, 2011, 76 FR 1442–1443.

The meeting will be held at the Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: January 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1683 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topic in Biomedical Engineering.

Date: February 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tooth Development and Mineralization.

Date: February 14, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Commitee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Drug Discovery for the Nervous System.

Date: February 17–18, 2011.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Donovan House, 1155 14th Street, NW., Washington, DC 20005.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapeutics.

Date: February 17, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Drug Discovery for the Nervous System.

Date: February 18, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Donovan House, 1155 14th Street, NW., Washington, DC 20005.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–HL–11–033: Psychosocial Stress and Behavior: Integration of Behavioral and Physiological Processes (R01).

Date: February 25, 2011.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Seasons Hotel, 2800 Pennsylvania Avenue, NW., Washington, DC 20007.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–HL–11–034: Development of Comprehensive and Conceptually-based Measures of Psychosocial Stress (R21).

Date: February 25, 2011.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Seasons Hotel, 2800 Pennsylvania Avenue, NW., Washington, DC 20007.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1834 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: February 7–8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Burch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1832 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC).

Date: February 23, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Committee, which is to share and coordinate information on existing research activities, and to make recommendations to the National Institutes of Health and other Federal agencies regarding how to improve existing research programs related to breast cancer and the environment. The detailed meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place:

Web: This meeting will be conducted remotely. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

In Person: National Institute of Environmental Health Sciences, Keystone Building, Room 2164/2166, 530 Davis Drive, Morrisville, NC 27560.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of

Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral comments you wish to present. Only one representative per organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Oral comments will begin at approximately 3 p.m. on Wednesday, February 23, 2011. Anyone who wishes to attend the meeting and/or submit comments to the committee is asked to RSVP via the following e-mail: *ibcercc@niehs.nih.gov.* All comments are delivered to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1830 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: March 7–8, 2011.

Open: March 7, 2011, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: March 7, 2011, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: March 8, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1829 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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; Preclinical Developmental Support.

Date: February 17, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jay Bruce Sundstrom, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Room 3119, Bethesda, MD 20892–7616, 301–496–7042, *sundstromj@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: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1827 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Career Development.

Date: February 28, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1826 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnership for Next Generation Biodefense Diagnostics.

Date: February 15, 2011.

Time: 11 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda. Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnership for Next Generation Biodefense Diagnostics.

Date: February 18, 2011.

Time: 11 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda. Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnership for Next Generation Biodefense Diagnostics.

Date: February 28, 2011.

Time: 11 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda. Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@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: January 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1824 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Beeson Review.

Date: February 18, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Regional and International Differences in Health and Longevity at Older Ages.

Date: February 24, 2011.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1823 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel, Clinical Trials in Sepsis.

Date: February 18, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. 301–594–3907. *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 20, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1684 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Molecular Neurogenetics Study Section.

Date: February 10, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Hotel, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5203, MSC 7812, Bethesda, MD 20892. (301) 435–0902. *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–153: Collaborative R01s in Molecular Neurogenetics.

Date: February 10, 2011.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Hotel, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892. (301) 435–1277. *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Chronic Diseases.

Date: February 16–18, 2011.

Time: 5 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694. *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Asthma, Lung Immunology, and Lung Physiology.

Date: February 23, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892. 301–435–1016. *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Sensory, Motor, and Cognitive Neuroscience.

Date: February 28–March 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Hotel, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Yuan Luo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207 MSC 7846, Bethesda, MD 20892–7846. 301–827–7915. *luoy2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1681 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, February 2, 2011, 8:30 a.m. to 2:45 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on January 14, 2011, 76; 10 FR 2011–727.

The time of the closed session on February 2, 2011 was changed to 8:30 a.m. to 10:15 a.m. and the time of the open session was changed to 10:30 a.m. to 2:45 p.m. The meeting is partially closed to the public.

Dated: January 20, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1673 Filed 1–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Request for Applicants for Appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting individuals who are interested in serving on the National Advisory Council (NAC) to apply for appointment. As provided for in the Department of Homeland Security Appropriations Act of 2007, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of Federal

preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters.

DATES: Applications for membership should reach FEMA at the address below beginning Friday, February 4, 2011 and before 5 p.m. EST, on Friday, March 4, 2011.

ADDRESSES: Applications for membership should be submitted by:

- *E-mail: FEMA-NAC@dhs.gov*.
- *Fax:* (202) 646–3930.
- *Mail:* The National Advisory Council Office, Federal Emergency Management Agency (Room 832), 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Alyson Price, The National Advisory Council Office, Federal Emergency Management Agency (Room 832), 500 C Street, SW., Washington, DC 20472–3100; telephone (202) 646–3746; fax (202) 646–3930; and e-mail *FEMA-NAC@dhs.gov.* For more information on the NAC, please visit the NAC Web site at *http://www.fema.gov/about/nac*. FEMA's Ethics Office may be contacted at telephone (202) 282–9822 or e-mail *ogc@dhs.gov*.

SUPPLEMENTARY INFORMATION: The National Advisory Council (NAC) is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, *et seq.* (Pub. L. 92–463). The Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters (6 U.S.C. 318).

The NAC consists of 35 members, all of whom are experts and leaders in their respective fields. Approximately one-third of the membership was appointed for a 3-year term expiring on June 15, 2011. Accordingly, the following discipline areas will have a position open for applications and nominations: Emergency Management, Emergency Response, Health Scientist, Standard Settings, Infrastructure Protection, Communications, Disabilities, Local Non-Elected Official, Tribal Elected Official, and three appointments which will be selected at the discretion of the FEMA Administrator. In addition, FEMA seeks applications to fill the remaining term for the Local Elected Official position whose term ends on June 15, 2012 and for the State Non-Elected Official position and an Administrator's Selection position which both end on June 15, 2013.

Appointees may be designated as Special Government Employees (SGE) as defined in section 202(a) of title 18, United States Code. Candidates selected for appointment as SGEs are required to complete a Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450). OGE Form 450 or the information contained therein may not be released to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*http://www.oge.gov*), contacting the NAC Office, or by contacting the FEMA Ethics Office. Contact information is provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The NAC assists FEMA in carrying out its missions by providing advice and recommendations to the FEMA Administrator on the development and revision of the national preparedness goal, the national preparedness guidelines, the National Incident Management System, the National Response Framework, National Exercise Program, and other related plans and strategies. The members of the NAC are appointed by the Administrator of FEMA and are composed of Federal, State, local, Tribal, and private-sector leaders and subject matter experts in law enforcement, fire, emergency medical services, hospital, public works, emergency management, State and local governments, public health, emergency response, standard settings and accrediting organizations, representatives of individuals with disabilities and other special needs, infrastructure protection, cyber security, communications, and homeland security communities.

Qualified individuals interested in serving on the NAC are invited to apply for appointment by submitting a resume or Curriculum Vitae (CV) to the NAC Office as listed in the **ADDRESSES** section of this notice. Letters of recommendation may also be provided, but are not required. Please ensure the submission includes the following information: The applicant's full name, home and business phone numbers, preferred e-mail address, home and business mailing addresses, current position title & organization, and the discipline area of interest (i.e., Emergency Management). Current NAC members whose terms are ending should notify the NAC Office of their interest in reappointment in lieu of submitting a new application, and should provide an updated resume and/or CV and letters of recommendation for consideration, if desired. The NAC meets in a plenary session approximately once per quarter. The NAC also holds at least one yearly teleconference meeting with public call-in lines. Members serve without compensation from the Federal Government; however, consistent with the charter, they do receive travel reimbursement and per diem under applicable Federal travel regulations. In support of the policy of the Department of Homeland Security on gender and ethnic diversity, qualified women and minorities are encouraged to apply for membership. Registered lobbyists, current FEMA employees, Disaster Assistance Employees, FEMA Contractors, and potential FEMA Contractors will not be considered for NAC Membership.

Dated: January 21, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–1807 Filed 1–26–11; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Entry of Articles for Exhibition.

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0037.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry of Articles for Exhibition (19 CFR 147.11(c)). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before March 28, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of

International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or recordkeepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Entry of Articles for Exhibition.

OMB Number: 1651–0037.

Form Number: None.

Abstract: Goods entered for exhibit at fairs, or for constructing, installing, or maintaining foreign exhibits at a fair may be free of duty under 19 U.S.C. 1752. In order to substantiate that goods qualify for duty-free treatment, the consignee of the merchandise must provide information about the imported goods, which is specified in 19 CFR 147.11(c).

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours based on updated estimates. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 50.

Estimated Number of Total Annual Responses: 2,500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 832.

Dated: January 24, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–1749 Filed 1–26–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; Immigration Bond; OMB Control No. 1653–0022.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), 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. Notice of this information collection was previously published in the **Federal Register** on November 5, 2010, Vol. 75, No. 214, 68372, allowing for a 60-day public comment period. No comments were received during this period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days February 28, 2011.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) 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;

(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:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–352. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households; Business or other for-profit. The data collected on this collection instrument is used by U.S. Immigration and Customs Enforcement to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of bond. Sureties have the capability of accessing, completing and submitting a bond electronically through ICE's eBonds system which encompasses the I–352, while individuals are still required to complete the bond form manually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Office of the Chief Financial Officer/OAA/Records Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., STOP 5705, Washington, DC 20536–5705.

Dated: January 11, 2011.

Joseph M. Gerhart,

Deputy Program Director, Records Management, Office of Asset Administration, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2011–1704 Filed 1–26–11; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; File No. OMB–6, Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), 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. The information collection was previously published in the **Federal Register** on November 5, 2010, Vol. 75 No. 214, 68371 allowing for a 60 day comment period. No comments were received during this period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until February 28, 2011.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) 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;

(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:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (File No. OMB–6) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. Section 404(b) of the Immigration and Naturalization Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Office of the Chief Financial Officer/OAA/Records Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., STOP 5705, Washington, DC 20536–5705.

Dated: January 10, 2011.

Joseph M. Gerhart,

Deputy Program Director, Records Management, Office of Asset Administration, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2011–1708 Filed 1–26–11; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–07]

Notice of Submission of Proposed Information Collection to OMB; Assessment of the LIHTC Program After 15 Years

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD has commissioned this study, an Assessment of the LIHTC Program after 15 Years, in order to understand whether projects that reach the 15 Year mark are remaining affordable, what types of properties are or are not remaining affordable, and what major factors contribute to these outcomes. The answers to these questions will help inform future policy and program design for affordable housing nationwide. HUD believes that this study will also be of great interest to people actively working with tax credits, including syndicators, owners, investors, financial institutions, and public agencies.

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 approval Number (2528–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice

is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Assessment of the LIHTC Program after 15 Years.

OMB Approval Number: 2528–New.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use

HUD has commissioned this study, an Assessment of the LIHTC Program after 15 Years, in order to understand whether projects that reach the 15 Year mark are remaining affordable, what types of properties are or are not remaining affordable, and what major factors contribute to these outcomes. The answers to these questions will help inform future policy and program design for affordable housing nationwide. HUD believes that this study will also be of great interest to people actively working with tax credits, including syndicators, owners, investors, financial institutions, and public agencies.

Frequency of Submission: On-occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	40	1		1		40

Total Estimated Burden Hours: 40.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 20, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–1796 Filed 1–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–06]

Notice of Submission of Proposed Information Collection to OMB; Capital Fund Education and Training Community Facilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Each year Congress appropriates funds to approximately 3,200 Public Housing Authorities (PHAs) for modernization, development, financing, and management improvements. Beginning in FY 2010, Congress set aside up to $40 million of the Capital Fund for Education and Training Community Facilities (CFCF) and PHAs can submit applications for funding using the forms in this collection.

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 approval Number (2577–0268) and should be sent to: HUD Desk Officer at, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Capital Fund Education and Training Community Facilities.

OMB Approval Number: 2577–0268.

Form Numbers: HUD 2990, SF424, SF–LLL, HUD 50075.1.

Description of the Need for the Information and Its Proposed Use:

Each year Congress appropriates funds to approximately 3,200 Public Housing Authorities (PHAs) for modernization, development, financing, and management improvements. Beginning in FY 2010, Congress set aside up to $40 million of the Capital Fund for Education and Training Community Facilities (CFCF) and PHAs can submit applications for funding using the forms in this collection.

Frequency of Submission: On-occasion, Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	300	47.75		0.0209		300

Total Estimated Burden Hours: 300.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 20, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–1801 Filed 1–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–05]

Notice of Submission of Proposed Information Collection to OMB; Owner's Certification With HUD Tenant Eligibility and Rent Procedures

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Collection of tenant data to ensure owners comply with Federal statutes and regulations that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

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 approval Number (2502–0204) and should be sent to: HUD Desk Officer at, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov*; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Owner's Certification with HUD Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Form Numbers: HUD9887, HUD 50059 A, HUD 90100, HUD 90104, HUD 90101, HUD 90102, HUD 90103, HUD 90106, HUD 90167, HUD 90105 a, HUD 90105 c, HUD 90105b, HUD 90105d, HUD 50059, HUD 90166, HUD 27061–h.

Description of the Need for the Information and Its Proposed Use:

Collection of tenant data to ensure owners comply with Federal statutes and regulations that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

Frequency of Submission: On-occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,277,693	0.4114		1.602		2,160,726

Total Estimated Burden Hours: 2,160,726.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 20, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–1802 Filed 1–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5481–N–02]

Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities; Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 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: Rudene Thomas, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7256, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Charles Bien, Acting Director, Office of Environment and Energy, Department of Housing and Urban Development, Room 7250, 451 7th Street, Washington, DC 20410–7000. For telephone

communication, contact Jerimiah Sanders, Environmental Review Division, 202–402–4571 or e-mail: *Jerimiah.J.Sanders@hud.gov.* 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 1–800–877–8339.

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: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

OMB Control Number: None.

Description of the need for the information and proposed use: The Request for Release of Funds (RROF) is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for release of funds. The currently approved collection also includes (1) Regulatory waivers of requirements of HUD environmental regulations; and (2) in lieu of hard copy, voluntary use of electronic submissions and notifications.

Frequency of Submission: On occasion.

Agency form numbers, if applicable: HUD–7015.15.

Members of affected public: Primary: Local, State, or Tribal Governments. Others: Public housing agencies, and private non- and for-profit entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimates are 18,791 respondents, 1 frequency, and .6 hours of response. Annual reporting and recordkeeping hour burden estimate is a total of 11,283 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: January 21, 2011.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–1803 Filed 1–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, on the next business day following the plat acceptance date.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys were executed to meet the administrative needs of various Federal agencies. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the California State Director, Bureau of Land Management, Sacramento, California. The lands surveyed are:

Mount Diablo Meridian, California

T. 25 N., R. 9 W., Dependent Resurvey and Subdivision, accepted December 16, 2010.

San Bernardino Meridian, California

T. 6 S., R. 22 E., Dependent Resurvey, Metes-and-Bounds Survey, Independent Resurvey and Subdivision of Section 18, accepted October 19, 2010.
T. 2 S., R. 23 E., Dependent Resurvey, accepted December 6, 2010.
T. 5 S., R. 23 E., Dependent Resurvey, accepted December 6, 2010.
T. 3–4 S., R. 23 E., Dependent Resurvey, accepted December 14, 2010.

Authority: 43 U.S.C., Chapter 3. Dated: January 6, 2011.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2011–1740 Filed 1–26–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat constituting the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary) and the subdivisional lines, and the subdivision of sections 33 and 34, T. 22 North, R. 22 East, of the Boise Meridian, Idaho, Group Number 1287, was accepted October 19, 2010.

The plat constituting the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 27 and 34, and a metes-and-bounds survey of the centerline of the right-of-way of Idaho State Highway Route 75, in sections 27 and 34, T. 2 South, R. 18 East, of the Boise Meridian, Idaho, Group Number 1286, was accepted October 20, 2010.

The plat constituting the dependent resurvey of portions of the Fifth Standard Parallel North (south boundary) and the subdivisional lines,

and the subdivision of sections 22, 27, 28 and 33, T. 22 North, R. 23 East, of the Boise Meridian, Idaho, Group Number 1288, was accepted November 1, 2010.

The plat constituting the dependent resurvey of portions of the east boundary, subdivisional lines, and the subdivision of sections 1, 11, and 12, and the further subdivision of section 11 in T. 9 S., R. 6 W., of the Boise Meridian, Idaho, Group Number 1289, was accepted November 10, 2010.

The plat constituting the dependent resurvey of portions of the south and west boundaries, subdivisional lines and subdivision of section 18, and the subdivision of sections 19, 30, and 31, in T. 2 S., R. 9 E., of the Boise Meridian, Idaho, Group Number 1295, was accepted December 3, 2010.

The plat constituting the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of sections 13, 23, and 24, in T. 2 S., R. 8 E., of the Boise Meridian, Idaho, Group Number 1296, was accepted December 3, 2010.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the subdivision of section 33, and the metes-and-bounds survey of certain tracts that identify Indian Allotments established by the U.S. Indian Service during 1910–1915, in sections 12, 13, 14, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T. 4 South, R. 35 East, Boise Meridian, Idaho, Group Number 1290, was accepted November 10, 2010.

Dated: January 11, 2011.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2011–1741 Filed 1–26–11; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–756]

In the Matter of Certain Reduced Ignition Proclivity Cigarette Paper Wrappers and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 17, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Schweitzer-Mauduit International, Inc. of Alpharetta, Georgia. Letters supplementing the complaint were submitted on January 5, 6, and 11, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain reduced ignition proclivity cigarette paper wrappers and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,725,867 ("the '867 patent") and U.S. Patent No. 5,878,753 ("the '753 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server 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.*

FOR FURTHER INFORMATION CONTACT: Lisa A. Murray, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2734.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 13, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain reduced ignition proclivity cigarette paper wrappers and products containing same that infringe one or more of claims 36, 43, and 45 of the '867 patent and claims 1–6, 10–18, and 22–25 of the '753 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Schweitzer-Mauduit International, Inc., 100 North Point Center East, Suite 600, Alpharetta, GA 30022.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Astra Tobacco Corporation, 141 Providence Road, Suite 100, Chapel Hill, NC 27515; delfortgroup AG, Fabrikstrasse 20, 4050 Traun, Austria; LIPtec GmbH, Staatstra e 37–41, 67468 Neidenfels, Germany; Julius Glatz GmbH, Staatstra e 43–49, 67468 Neidenfels, Germany.

(c) The Commission investigative attorney, party to this investigation, is Lisa A. Murray, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the

complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 13, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–1705 Filed 1–26–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–385 (Third Review)]

Granular Polytetrafluoroethylene Resin From Italy

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the adequacy phase of the subject five-year review concerning the antidumping duty order on granular polytetrafluoroethylene resin ("granular PTFE resin") from Italy.

DATES: *Effective Date:* January 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the U.S. International Trade Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the U.S. International Trade Commission ("Commission") should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 1, 2010, the Commission published its notice of institution and the Department of Commerce ("Commerce") published its notice of initiation for the subject five-year reviews concerning the antidumping duty orders on granular PTFE resin from Italy and Japan (75 FR 67082–67083 and 67105–67108, November 1, 2010). However, Commerce's notice concerning the initiation of the review on granular PTFE resin from Italy was incorrectly published.[1]

On November 22, 2010, Commerce notified the Commission that it did not receive a notice of intent to participate in the reviews of the antidumping duty orders on granular PTFE from Italy and Japan, and that it intended to revoke those antidumping duty orders not later than 90 days after the November 1, 2010, **Federal Register** notice of initiation.[2] In that letter, Commerce noted that the initiation of review for granular PTFE resin from Italy was incorrectly published in the **Federal Register**. The **Federal Register** published a correction of the initiation notice on January 12, 2011 (76 FR 2083). On January 13, 2011, Commerce notified the Commission that it does not intend to issue a final determination revoking the antidumping duty order on granular PTFE resin from Italy because of the error in publication concerning the initiation of that review.[3] Commerce also notified the Commission that, although it has extended its deadline for domestic parties to submit a notice of intent to participate in its review of the order concerning granular PTFE resin from Italy to no later than fifteen days from the date of publication of its correction notice, the initiation date of the subject review concerning Italy remains November 1, 2010.

In light of these circumstances and to permit parties additional time to respond to the notice of institution, the Commission has determined to exercise its authority to extend its review period concerning the order on granular PTFE resin from Italy by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).[4] The Commission's new schedule for the adequacy phase of the subject review is as follows: Entries of appearance and administrative protective order ("APO") applications are due February 17, 2011; Responses to the 13 items requested in the Commission's notice of institution (75 FR 67105, November 1, 2010) are to be filed with the Secretary to the Commission not later than February 28, 2011; and party comments on the adequacy of responses may be filed with the Commission by April 11, 2011.

For further information concerning the conduct of this review and rules of general application, consult the Commission's institution notice (75 FR 67105, November 1, 2010) and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 21, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–1707 Filed 1–26–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–695]

Certain Silicon Microphone Packages and Products Containing the Same; Notice of Commission Determination To Review in Part an Initial Determination; On Review Taking No Position on Two Issues and Vacating the Conclusion of No Domestic Industry; Termination of the Investigation With a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the initial determination ("ID")

[1] While Commerce's **Federal Register** notice of November 1, 2010, correctly identified a review on granular PTFE resin from Japan, it did not correctly identify the review of the order on granular PTFE resin from Italy. Instead, the notice incorrectly described the review as pertaining to an order concerning certain cut-to-length carbon quality steel plate.

[2] Letter from Edward Yang, Senior Director, AD/CVD Operations, China/NME Unit, Department of Commerce to Catherine DeFilippo, November 22, 2010.

[3] Commerce's January 13, 2011, letter does not indicate a change concerning its intent to revoke the order concerning granular PTFE resin from Japan. Letter from Susan Kuhbach, Office Director, AD/CVD Operations, Office 1, Department of Commerce to Catherine DeFilippo, January 12, 2011.

[4] Since Commerce has not notified the Commission of a change in its position concerning the intent to revoke the order concerning granular PTFE resin from Japan, the Commission's change in the schedule of the adequacy phase concerning granular PTFE resin applies to only the order concerning Italy.

issued by the presiding administrative law judge ("ALJ") on November 22, 2010, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation. On review, the Commission has determined to take no position on two issues, to vacate the finding of no domestic industry, and to terminate this investigation with a finding of no violation.

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 (*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 voted to institute this investigation on December 16, 2009, based on a complaint filed by Knowles Electronics LLC of Itasca, Illinois ("Knowles"). 74 FR 68,077 (Dec. 22, 2009). The complaint named as the sole respondent Analog Devices Inc. of Norwood, Massachusetts ("Analog"). The accused products are certain microphone packages. Knowles asserts claim 1 of U.S. Patent No. 6,781,231, and claims 1, 2, 7, 16–18, and 20 of U.S. Patent No. 7,242,089.

Knowles filed with its complaint in this investigation a motion for temporary relief that requested that the Commission issue a temporary limited exclusion order and temporary cease and desist order. The ALJ denied Knowles' request for temporary relief in an initial determination ("TEO ID"). Initial Determination on Complainant's Motion for Temporary Relief (Mar. 24, 2010). In the TEO ID, the ALJ found that all but one of the asserted patent claims were likely anticipated by U.S. Patent No. 6,324,907 to Halteren. (Some of these same claims were also found to be likely anticipated by U.S. Patent No. 6,594,369 to Une.) The remaining claim, while not invalid, was held not likely infringed. For these reasons, there was no patent claim for which Knowles demonstrated a likelihood of success on the merits (i.e., as to both validity and infringement).

The TEO ID also found that Knowles had not demonstrated irreparable harm. In particular, the ID found that Analog's sales of accused microphone packages had not caused Knowles lost sales, had not damaged Knowles' relationships with its customers, and otherwise had no proven detrimental effect on Knowles. The ALJ found, *inter alia,* that these two factors (likelihood of success and irreparable harm) precluded temporary relief here.

On review of the TEO ID to the Commission, the Commission noted that the absence of irreparable harm was dispositive, and determined to review the TEO ID in order simultaneously to take no position on the ALJ's findings of likelihood of success. 75 FR 30,430 (June 1, 2010). The Commission's decision enabled "the ALJ to assess the merits" at the final ID stage "unburdened by Commission impressions that may have been formed on a limited temporary-relief record." *Id.* at 30,431.

On November 22, 2010, the ALJ issued his final Initial Determination ("ID"). The ID found that all of the asserted patent claims are invalid under 35 U.S.C. 102 and 103. More specifically, the ID found claim 1 of the '231 patent to be anticipated under 35 U.S.C. 102(a) by Halteren. In the alternative, the ID found claim 1 of the '231 patent to be obvious under 35 U.S.C. 103(a) over Halteren in view of U.S. Patent No. 7,003,127 (Sjursen), or in the alternative over U.S. Patent No. 4,533,795 (Baumhauer) in view of Sjursen. The ALJ found claims 1, 2, 7, 16, 17, 18 and 20 of the '089 patent to be obvious over Halteren in view of Une, or in the alternative over Halteren in view of U.S. Patent No. 7,080,442 (Kawamura).

The ID found that Analog infringed all of the asserted patent claims. The ID further found that if any of the patent claims had been valid that Knowles had demonstrated the existence of a domestic industry relating to the articles protected by the patents. 19 U.S.C. 1337(a)(1)(B), (a)(2). However, the ID concluded that because Knowles had not demonstrated the existence of a valid patent claim that there could be no domestic industry.

On December 6, 2010, Knowles petitioned for review of the ID. The petition challenged certain of the ALJ's claim constructions, and based substantially on those claim constructions argued, *inter alia,* that the prior art did not anticipate or render obvious any of the asserted patent claims. That same day, Analog filed a contingent petition for review. Analog's petition raised theories of anticipation and obviousness that the ALJ rejected, and made, *inter alia,* noninfringement arguments based on disputed claim constructions. The Commission investigative attorney filed a response in support of the ID, and each of the private parties opposed the other's petition in its entirety.

Having examined the record of this investigation, including the ALJ's ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular the Commission has determined to review and take no position on the construction of the term "attached" in claims 1 and 7 of the '089 patent. The only dispute, raised by Knowles in its petition, is whether the ALJ was correct to find that the prosecution history requires a certain meaning for "attached" and whether that meaning is narrower than the ordinary meaning of the term. Construction of the term is not now necessary because the infringement, invalidity, and domestic industry arguments do not turn on the difference between the ALJ's construction and Knowles' proposed construction.

The Commission also has determined to review and take no position on whether a certain journal article by Premachandran, *Si-based Microphone Testing Methodology & Noise Reduction,* Proceedings of SPIE, vol. 4019, at 588–92 (2000), is prior art under 35 U.S.C. 102 for either of the asserted patents. The ID did not rule any patent claim invalid as a result of this article.

The Commission has determined to review and vacate the ID's conclusion that the technical prong of the domestic industry requirement, 19 U.S.C. 1337(a)(2) & (a)(3), is not met where all the asserted patent claims are found invalid. It is Commission practice not to couple an analysis of domestic industry to a validity analysis. *See, e.g., Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing Same,* Inv. No. 337–TA–396, Comm'n Op. at 17 (Aug. 13, 1998) ("before considering the validity of claim 8 of the '464 patent and possible infringement of it, we address whether the required domestic industry exists or is in the process of being established"); *Certain Encapsulated Integrated Circuit Devices and Products Containing Same,* Inv. No. 337–TA–501 (remand), Initial Determination at 104–105 (Nov. 9, 2005), *review denied,* Notice, 75 FR 43553, 43554 (July 26, 2010). The only instance in which the

Commission has recognized such a connection involved invalidity for indefiniteness, 35 U.S.C. 112 ¶ 2, and the Commission did so in that context because indefiniteness there made it impossible for the complainant to demonstrate whether a patent claim was practiced. Notice, *Certain Video Graphics Display Controllers and Products Containing Same,* Inv. No. 337–TA–412, 64 FR 40042, 40043 (July 23, 1999). There is no such difficulty with regard to invalidity under 35 U.S.C. 102 and 103. Thus, under the technical prong, the complainant bears the burden of proving that its domestic industry practices a claim of each asserted patent. The Commission has determined not to review the remainder of the ID's domestic industry analysis, which found the existence of a domestic industry without regard to the validity of the asserted patent claims.

The Commission has determined not to review the remainder of the ID. Accordingly, the Commission has terminated this investigation with a finding of no violation.

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 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

Issued: January 21, 2011.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–1706 Filed 1–26–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–56]

Kermit B. Gosnell, M.D.; Decision and Order

On April 30, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Kermit B. Gosnell, M.D. (Respondent), of Philadelphia, Pennsylvania. The Show Cause Order proposed the revocation of Respondent's DEA Certificates of Registration, AG4676992 and BG9223176, and the denial of any pending applications to renew or modify the registrations, on the ground that Respondent lacked authority to handle controlled substances in Pennsylvania and Delaware, the States in which he maintained the respective registrations. Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

Respondent, acting *pro se,* timely requested a hearing, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). Thereafter, the ALJ issued an order directing the parties to file prehearing statements in the matter.

In lieu of a prehearing statement, the Government filed a Motion for Summary Disposition. Summ. Disp. Mot., at 1. Therein, the Government contended that Respondent had previously voluntarily surrendered his DEA registration, BG9223176, thereby negating the need for any further action regarding that registration; with regard to registration, AG4676992, the Government contended that Respondent lacks authority to handle controlled substances in Pennsylvania, the jurisdiction in which he is licensed to practice medicine and is registered with the DEA. *Id.* at 1–2.

In support of its motion, the Government attached an Affidavit (dated June 16, 2010) of a DEA Diversion Investigator (DI), who stated that Respondent's Delaware medical license and controlled substances license were suspended and that Respondent had surrendered DEA registration, BG9223176. DI Aff., at 1–2. The DI further stated that Respondent holds DEA registration, AG4676992, at the location of 3801 Lancaster Avenue, Philadelphia, Pa., that this registration will expire by its terms on September 30, 2010; and that Respondent's Pennsylvania medical license was then suspended. *Id.* at 2. In support of its motion, the Government also attached a copy of the Order of Temporary Suspension and Notice of Hearing issued to Respondent by the Commonwealth of Pennsylvania Department of State, State Board of Medicine, dated February 22, 2010, which ordered the temporary suspension of Respondent's Pennsylvania medical license effective on the service of the order.

The Government thus contended that because Respondent "currently lacks authority to handle controlled substances in" Pennsylvania, he "is not authorized to possess a DEA registration in that state." Summ. Disp. Mot., at 1 (citing 21 U.S.C. 801(21), 823(f), 824(a)(3)). The Government therefore requested that the ALJ grant its motion and recommend to me that Respondent's registration, AG4676992, be revoked.[1]

On July 8, 2010, the ALJ issued an order which granted Respondent until July 16, 2010, to file a response to the Government's motion. Respondent, however, failed to file a prehearing statement, a response to the Government's motion, or any other documents or information, other than his Request for Hearing. Accordingly, on July 20, 2010, the ALJ granted the Government's Motion, finding that there were no disputed facts regarding Respondent's loss of state authority to handle controlled substances in the State in which he held a DEA registration, and, further, that he had waived his right to a hearing under 21 CFR 1301.43(d). The ALJ recommended that Respondent's DEA registration be revoked and that any pending applications be denied. The Respondent did not file exceptions to the decision. The ALJ then forwarded the record to my office for final agency action.

I adopt the ALJ's finding that Respondent has waived his right to participate in the proceeding by failing to file a pleading in response to the Government's motion. ALJ at 4. However, I reject the ALJ's recommended decision because I conclude that this case is now moot.

The DI's affidavit establishes that Respondent's Philadelphia registration was due to expire on September 30, 2010. According to the Agency's registration record for Respondent, of which I take official notice,[2] Respondent has not submitted a renewal application, let alone a timely one, which would have kept his registration in effect pending the issuance of this Order. I therefore find that Respondent's registration expired on September 30, 2010.

It is well settled that "[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also William W. Nucklos,* 73 FR 34330 (2008). Because Respondent's registration has expired and there is no pending application to act upon, I conclude that this case is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 21 CFR 0.100(b) and 0.104, I order that the Order to Show Cause issued to

[1] The Government further requested that the ALJ issue an order staying any further filings pending resolution of its motion.

[2] Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

Kermit B. Gosnell, M.D., be, and it hereby is, dismissed.

Dated: January 18, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–1691 Filed 1–26–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John M. Chois; Decision and Order

On September 27, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to John M. Chois, D.O. (Registrant), of Orlando, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, BC6071904, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that he "do[es] not have authority to handle controlled substances in the [S]tate of Florida." Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

More specifically, the Show Cause Order alleged that the Florida Department of Health had ordered the emergency suspension of Registrant's license to practice medicine. *Id.* The Order thus alleged that Registrant is "currently without authority to handle controlled substance in the State of Florida, the [S]tate in which [Registrant is] registered with DEA," and that as a consequence, his registration was subject to revocation. *Id.* at 1–2. The Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43).

On October 4, 2010, the Show Cause Order was served on Registrant by Certified Mail, Return Receipt Requested, which was addressed to him at his registered location. Since the date of service of the Order, thirty (30) days have now passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of hearing, and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate Registration, BC6071904, which authorizes him to dispense controlled substances in Schedules II through V as a practitioner, at the registered address of Advanced Aesthetics, 7425 Conroy Road, Orlando, Florida 32835. His registration does not expire until August 31, 2013.

Registrant is an osteopathic physician licensed by the State of Florida, who is board-certified in plastic surgery and hand surgery. On August 6, 2010, the State Surgeon General, Florida Department of Health (DOH), ordered the emergency suspension of Registrant's medical license. *In re John Michael Chois, D.O.,* Order of Emergency Suspension of License, at 1 (Fla. DOH Aug. 6, 2010) (No. 2010–03967). The State Surgeon General suspended Registrant's license because he failed to comply with the DOH's order that he provide a hair sample for drug testing and that he enter an approved inpatient evaluation program for healthcare professionals with substance abuse problems. *Id.* at 9.

Registrant's license to practice medicine remains suspended as of the date of this Order. Thus, Registrant is currently without authority to handle controlled substances under the laws of the State of Florida, the State in which he is registered with DEA.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice"). *See also id.* § 823(f) ("The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for obtaining and maintaining a DEA registration.

Accordingly, DEA has held that revocation of a registration is warranted whenever a practitioner's state authority to dispense controlled substances has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing revocation of a registration "upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances").

DEA has further held that revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action and at which he may ultimately prevail. *See Robert Wayne Mosier,* 75 FR 49950 (2010) ("revocation is warranted * * * even in those instances where a practitioner's state license has only been suspended, and there is the possibility of reinstatement"); *accord Bourne Pharmacy,* 72 FR 18273, 18274 (2007). *See also Alton E. Ingram, Jr.,* 69 FR 22562 (2004); *Anne Lazar Thorn,* 62 FR 12847 (1997) ("the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances").

As found above, on August 6, 2010, the Florida Surgeon General immediately suspended Registrant's state medical license. Because Registrant is without authority to dispense controlled substances in the State where he practices medicine and holds his DEA registration, he is not entitled to maintain his registration. *See* 21 U.S.C. 802(21), 823(f), 824(a)(3). Accordingly, Registrant's registration will be revoked and any pending application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 21 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BC6071904, issued to John M. Chois, D.O., be, and it hereby is, revoked. I further order that any pending application of John M. Chois, D.O., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

[1] For the same reasons as cited in the State's Emergency Suspension Order, I find that the public interest requires that this Order be made effective immediately. *See* 21 CFR 1316.67.

Dated: January 18, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–1694 Filed 1–26–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John G. Costino, D.O.; Dismissal of Proceeding

On June 1, 2010, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to John G. Costino, D.O. (Respondent), of North Wildwood, New Jersey. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AC5210480, and the denial of pending applications to renew or modify his registration, on the ground that "[a]s a result of actions by the New Jersey State Medical Board, [Respondent is] currently without authority to handle controlled substances in the State of New Jersey, the state in which [he is] registered with DEA." Show Cause Order at 1. The Show Cause Order also notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of hearing, the procedures for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43(a), (c), (d) & (e)).

On June 17, 2010, Respondent filed a letter with the Hearing Clerk in which he noted that he had filed an appeal of some unspecified action and that he was "requesting reinstatement of [his] medical license among other things." Letter of Respondent to Hearing Clerk (June 14, 2010). Therein, Respondent also filed a request to waive his right to a hearing. *Id.*

Thereafter, the Government submitted the record to me for Final Agency Action. Based on Respondent's letter to the Hearing Clerk, I find that Respondent has waived his right to a hearing. I further find, however, that Respondent's registration expired on August 31, 2010, and that Respondent has not filed a renewal application.

It is well settled that "[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also William W. Nucklos,* 73 FR 34330 (2008). Because Respondent's registration has expired and there is no pending application to act upon, I conclude that this case is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that the Order to Show Cause issued to John G. Costino, D.O., be, and it hereby is, dismissed.

Dated: January 18, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–1692 Filed 1–26–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Algirdas J. Krisciunas, M.D.; Revocation of Registration

On January 19, 2010, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration (Order) to Algirdas J. Krisciunas, M.D. ("Registrant"), of Lauderdale Lakes, Florida. The Order proposed the revocation of Registrant's DEA Certificate of Registration, BK4015334, and the denial of any applications for renewal or modification of his registration, on the ground that his "continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f)." Order, at 1. Based on the allegations presented, I also concluded that Registrant's continued registration during the pendency of this proceeding "constitutes an imminent danger to the public health and safety" and immediately suspended his registration. *Id.* at 2.

The Order alleged that Registrant was the "owner of Social Medical Center (SMC), a pain clinic located at [his] registered location" and that he "issue[d] many purported prescriptions for controlled substances" from there. *Id.* at 1. The Order further alleged that Registrant "prescribed and dispensed controlled substances, including oxycodone [1] and alprazolam,[2] to two undercover law enforcement officers on five different occasions from July 13 through September 10, 2009, in violation of 21 U.S.C. §§ 841(a)(1) and 846." *Id.* at 2. The Order also alleged that Registrant and his staff "falsified medical records for the two undercover officers" and that Registrant "advised the undercover officers how to falsify medical records to make it appear that they had legitimate medical conditions warranting the use of controlled substances." *Id.* The Order next alleged that Registrant and his staff "sold the medical records of others to an undercover officer so that the records could be altered to appear that they were the medical records of the undercover officer." *Id.*

The Order further alleged that "[b]ased on [his] consultations with, and examinations of, the two undercover officers," Registrant "knew, or should have known, that neither of the undercover officers had a legitimate medical condition warranting the prescribing of controlled substances" because the "undercover officers provided inconsistent statements regarding the nature of their alleged injuries and gave negative answers when queried about any pain they were experiencing." *Id.* The Order thus alleged that Registrant "issu[ed] [controlled substance] prescriptions outside the usual course of professional practice or for other than a legitimate medical purpose," in violation of Federal law. *Id.* (citing 21 U.S.C. 823(f)(4); 21 CFR 1306.04).

Finally, the Order alleged that on July 1, 2009, Registrant's "office staff sold 53 oxycodone 30 mg pills to an undercover officer for $500, in violation of 21 U.S.C. § [] 841(a)(1)," and that "[t]his transaction occurred at [his] office during regular business hours while [he was] on the premises." *Id.* The Order thus alleged that Registrant "failed to exercise proper oversight of [his] office staff or take proper measures to ensure the safeguarding of controlled substances stored at [his] office." *Id.*

Based on the above, I made the "preliminary finding that [Registrant's] continued registration is inconsistent with the public health and safety." *Id.* (citing 21 U.S.C. 823(f), 824(a)(4)). Having concluded that Registrant's "continued registration while these proceedings are pending constitutes an imminent danger to the public health and safety because [he has] repeatedly displayed a willingness to prescribe widely abused controlled substances for other than a legitimate medical purpose," I further ordered the immediate suspension of his registration. *Id.* (citing 21 U.S.C. 824(d); 21 CFR 1301.36(e); 28 CFR 0.100). *Id.*

On January 20, 2010, the Order, which also notified Registrant of his rights to either request a hearing or submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either, was personally served on Registrant by a DEA Diversion Investigator. Since the date of service of

[1] Oxycodone is a schedule II controlled substance. 21 CFR 1308.12(b)(1)(xiii).

[2] Alprazolam is a schedule IV controlled substance. 21 CFR 1308.14(c)(1).

the Order, more than thirty days have passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing on the allegations or submitted a written statement. 21 CFR 1301.43(a)–(c). I therefore find that Registrant has both waived his right to a hearing and to submit a written statement, and I issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government.[3] 21 CFR 1301.43(d)–(e). I make the following findings.

Findings

Registrant holds DEA Certificate of Registration, BK4015334, which authorizes him to dispense as a practitioner controlled substances in schedules II through V. Cert. of Reg. Hist. (March 18, 2010). Registrant is registered at the address of 3401 West Oakland Park Blvd., Lauderdale Lakes, Florida 33311; this address was the location of a pain clinic which was owned by his wife, Maria Bulich, and which did business under the name of "Social Medical Center" (SMC). *Id.;* Aff. of Task Force Officer (TFO) 1, at 1, 3.

On July 1, 2009, a Broward County Sheriff's Office detective assigned to a DEA Task Force attempted an undercover buy at SMC. Using the name Bill Rix,[4] the detective posed as a personal trainer who had recently moved to the area and who "needed a supplier of pain medicine due to discomfort from an old auto accident."[5] Aff. of TFO1, at 1.

Immediately on entering SMC, Rix met both Registrant and his receptionist, M.L.A. *Id.* M.L.A told Rix that, to obtain controlled substances from Registrant, he would need an MRI report (to show "the nature and location of chronic pain-causing injuries") and a pharmacy drug profile (to "show the drugs the patient has been receiving"). Registrant stated that this was because state regulations required that a chronic pain patient first undergo a thirty-day regimen with non-controlled pain medications and that controlled substances could only be prescribed upon a determination that the non-controlled medications were not effective. *Id.* at 2; Tr. 3–4 (July 1, 2009). When Rix told Registrant and M.L.A. that his most recent MRI was from 2002, both Registrant and M.L.A. told Rix that he needed a newer MRI and referred him to a mobile MRI, which could probably perform the exam the same day and would charge $250. Tr. 6 (July 1, 2009). Registrant further explained that he needed to have documentation on file to adequately justify his prescribing of controlled substances in the event that DEA investigators inspected the clinic. *Id.* at 9.

After Registrant exited the room, Rix asked M.L.A. and another female, M.R., whether he could just change the date on his old MRI. *Id.* at 11. In response, M.L.A. offered to sell Rix an MRI, on which he could change the name and date, as well as a pharmacy record. *Id.* at 11–12. M.R. then asked Rix whether he currently had controlled substances or needed some, and offered to sell him oxycodone 30 mg pills for $10 per pill; Rix and M.R. agreed that he would buy 50 pills. *Id.* at 13–16. M.R. then counted out 53 oxycodone 30 mg pills, put them in a prescription bottle, and sold them to Rix for $500. Aff. of TFO 1, at 2. Rix confirmed with M.L.A. and M.R. that he would take the MRI and change the date, but then asked whether someone would be calling the radiologist to verify the study. Tr. 17 (July 1, 2009). M.L.A. assured him that there would be no problem with the verification, as she was the individual who verified MRIs. *Id.* She also stated that she would take care of the pharmacy report and that Rix just needed to alter the name and date on the MRI and bring it back. *Id.* at 21.

Rix then stated, "I'm glad you guys came back up here[.] I was like you got to be kidding me with what he was telling me, I'm like to go through all that [b.s.], are you kidding." *Id.* M.L.A. replied: "I know I wish you would have talked to me first, but he was there." *Id.* Later, M.L.A. stated that "[Registrant] knows, he knows. He'll write you whatever you want, but he has to cover his ass too." *Id.* at 22. She then added that Registrant would give Rix up to 240 oxycodone pills. *Id.*

On July 13, 2009, Rix returned to SMC with the altered MRI and an altered pharmacy profile. Aff. of TFO 1, at 3. Rix handed the records to M.L.A. and then met with Registrant in the presence of his wife, Maria Bulich. *Id.* Registrant examined the records and inquired as to the type of accident that had caused Rix's pain. *Id.* Rix responded that he had been in a car accident. *Id.* With regard to the pharmacy profile, Registrant told Rix that he would have to reduce the amount of Xanax he was taking because it could cause memory loss. *Id.* Registrant then stated that he could not provide that much oxycodone in 80 mg doses; Rix replied that oxycodone 30 mg would suffice. *Id.*

After that, M.L.A. gave Rix a form to complete, which included a diagram for specifying the location of his pain and blanks for noting his pain levels. *Id.* Rix did not complete either of these sections. *Id.* In the examining room, Registrant noticed the incomplete form and asked Rix to complete it. *Id.* Although Rix's MRI indicated that he had back pain, on the diagram Rix noted that he had neck pain. *Id.* Registrant noticed the discrepancy and changed the marking on the diagram, explaining that the medical record needed to match the MRI to satisfy any inspectors who might examine the records. *Id.*

Registrant and Rix then discussed the number of oxycodone 30 mg pills Registrant would need to prescribe to provide the equivalent of the dosages noted in Rix's pharmacy profile. *Id.;* Tr. 31 (July 13, 2009). While Rix's profile indicated that he had been taking two 80 mg pills a day (totaling 160 mg per day), Registrant offered to prescribe six tablets of oxycodone 30 mg per day (totaling 180 mg per day). Tr. 31 (July 13, 2009). The conversation then turned to Xanax, with Rix stating that he was not "especially interested" in the drug. Aff. of TFO 1, at 3–4; Tr. 32–33 (July 13, 2009).

Rix then asked Registrant what he should write on the forms so that his medical record would look legitimate to the inspectors. Aff. of TFO 1, at 4. According to Rix, Registrant instructed him to write false information, such as that Rix could not lift more than twenty pounds even though he had told Registrant that he was a personal trainer who frequently lifted weights. *Id.;* Tr. 36 (July 13, 2009). As to a question regarding whether he exercised, Registrant told Rix that "you don't want to compromise yourself" and to "just put down swimming and walking" because "any kind of catch word * * * they get hang [sic] up on." Tr. 37 (July 13, 2009).

Registrant and Rix then went through the questions on the form together, and

[3] In its Request for Final Agency Action, the Government argues that revocation is warranted under the additional ground that Registrant "has been convicted of a felony under subchapter 1 of chapter 13, Title 21, United States Code." Request for Final Agency Action, at 4. Thereafter, the Government submitted a First Supplement to Request for Final Agency Action which argued that revocation was also warranted because on August 20, 2010, the State of Florida issued an Order of Emergency Suspension, which immediately suspended Registrant's medical license and that he no longer has authority under State law to dispense controlled substances. First Supplement to Request for Final Agency Action, at 1 (citing 21 U.S.C. 824(a)(3)). Attached to the filing was a copy of the State order.

Finally, the Government submitted a Second Supplement to Request for Final Agency Action, which noted that on October 13, 2010, the U.S. District Court for the Southern District of Florida entered a judgment, which adjudicated Registrant guilty of six felony counts under the Controlled Substances Act. Attached to the filing was a copy of the Judgment.

[4] Throughout this decision, each TFO's assumed name is used interchangeably with the titles of TFO 1 and TFO 2.

[5] The officer wore a wire during the visit to record it; the recording was later transcribed.

Registrant conducted a brief physical examination of Rix. *Id.* at 35–45, 48–49. Rix deliberately followed Registrant's instructions without complaining of any problems and said that he felt "stiff" but that he had no pain. Aff. of TFO 1, at 4. As to his pain rating, Registrant explained that "nine is after you had an operation, right after." Tr. 36 (July 13, 2009). After Rix responded, "Okay so I don't have an operation," Registrant stated, "I'd say about seven or eight maybe you know * * * Ah without the medicines." *Id.*

Rix then read one of the form's questions to Registrant: "Rate your pain by circling the number that best describes your pain at its worst at the last of the month" and asked "is that where I put seven or eight?" *Id.* at 38. Registrant stated, "actually no." *Id.* He then explained, "you were helped with medication so." *Id.* Proceeding to the next question, which asked about his pain level "on average," Rix asked whether that should be "four." *Id.* Registrant answered, "Yeah five or something like that." *Id.*

When Registrant asked whether he had pain radiating down his legs, Rix replied "no." *Id.* at 40. Registrant then told Rix that "I would not want to put down good or poor, just fair." *Id.* Next, Registrant had Rix bend at his waist and said, "Okay this is the important thing, are you on medicines now?"; Rix answered in the affirmative. *Id.* at 43. Registrant then stated: "Because today you are in no pain bending forward because you are on medicines." *Id.*

When Registrant had Rix bend to one side, he stated that he did not have any pain but was "[j]ust tight." *Id.* at 44. Registrant had Rix place his arms on his hips and then turn, at which point Rix again reported having "[t]ightness." *Id.* Registrant then coached Rix: "No use the correct word, pain," and explained that tightness "does not qualify pain medicine." *Id.* Rix then reported pain, and Registrant commented, "Don't confuse the inspectors with anything." *Id.*

Registrant and Rix then discussed the latter's occupation as a personal trainer. When Rix asked "Can we scratch that out[?]," Registrant replied, "No that's fine * * * but ah you must say that you don't do anything, any heavy lifting." *Id.* at 45. Rix then said "I just instruct," and Registrant replied, "Yeah you instruct." *Id.*

As the appointment neared its end, Rix asked Registrant whether he had a referral program and suggested that he could refer people to him. *Id.* at 53. Registrant said "sure," but that "they have to qualify of course." *Id.*

At the conclusion of the visit, Registrant issued Rix three prescriptions: One for 180 oxycodone 30 mg, One for 90 oxycodone 15 mg, and one for 30 alprazolam (Xanax) 2 mg. Aff. of TFO 1, at 4. Registrant then gave the prescriptions to his wife, who filled them and collected $740 from Rix for both the examination and the medication. *Id.* Ms. Bulich indicated that she would pay Rix $20 for each new patient he referred. *Id.;* Tr. 61 (July 13, 2009). In his affidavit, the TFO summarized his visit stating that "[t]he entire process was one in which [Registrant] coached or led me into giving answers that would qualify me to receive pain medication, not as an examination oriented toward determining my medical condition and needs." Aff. of TFO 1, at 4.

On July 30, 2009, another TFO visited Registrant using the name of Keith E. Anderson. Aff. of TFO 2, at 1. On entering the clinic, Anderson met M.L.A. and told her that "Bill" had referred him. Aff. of TFO 2, at 1–2. Anderson brought with him an MRI report and a pharmacy profile which were copies of the ones that Rix had received from M.L.A. on July 1, 2009, but which were altered to state that they were Anderson's. *Id.* at 2. Another female employee, whose name is unknown, then gave Anderson a medical form to complete; however, he left much of it blank. *Id.*

While in Registrant's office, Registrant asked Anderson what kind of accident he had had; Anderson stated that he had been in a car accident. *Id.* Anderson then told Registrant that he wanted his help in completing the medical form "so that [they] would not get in trouble with the inspectors." *Id.* As the two discussed the forms, Registrant asked Anderson what drugs he had been taking and advised him to stop taking Soma and to reduce the amount of Xanax. *Id.*

Registrant filled out the form and told Anderson "you do not lift more than 15 pounds" and that "no heavy lifting [was] allowed." *Id.* He also calculated "how many oxycodone 30 mg pills he should prescribe to be equivalent to the 80 mg pills reflected in the pharmacy profile." *Id.* Registrant further "commented about being careful about inspectors who would look at the paperwork." *Id.*

During the visit, Registrant administered several movement tests on Anderson. *Id.* Anderson stated that "[w]hen [he] said [he] had 'a little pain,' or 'no pain,' [Registrant] said that 'if you had no medicines, you would have pain?'" *Id.* According to the TFO, "[t]he effect of the conversation was to coach me on how to respond in order to receive the pain killers I wanted." *Id.*

Registrant issued Anderson prescriptions for 60 oxycodone 30 mg, 30 Xanax 2 mg, and 120 Percocet 10/325 mg. *Id.* at 2–3. Registrant then gave the prescriptions to his wife, who filled the oxycodone and Xanax. *Id.* at 3. However, because the clinic did not have Percocet, Anderson was given the prescription to fill elsewhere. *Id.* Anderson mentioned to both Registrant and his wife that he had been referred by "Bill," "who 'should get a kickback'" for the referral; Registrant's wife noted that she would "take care of it." *Id.* Anderson paid a total of $320 for the visit and the controlled substances. *Id.*

On August 6, 2009, Rix returned to SMC, and noted on the medical form that he "felt no pain and no interference with [his] daily activities." Aff. of TFO 1, at 4–5; Tr. 1 (Aug. 6, 2009). Rix asked Registrant what he could put on the form to obtain larger quantities of the drugs. Aff. of TFO 1, at 5. Registrant told him that his timing was bad because DEA was increasing its scrutiny of pain clinics and even sending in undercover operatives. *Id.*

Rix and Registrant continued their discussion of the possibility of increasing the quantity of the drugs. Registrant told Rix to fill in a response to a certain question as "maybe two or three you know some back pain" so it would support an increase at the next visit. Tr. 14 (Aug. 6, 2009). Later, Rix sought to confirm that circling two or three on the form "would give us a reason to increase [the medications] a little bit." *Id.* at 19. Registrant responded, "Yeah a little bit but not necessarily * * * and in case, depending on the finding in you [sic] case you know you need." *Id.* Registrant then stated that Rix did "have arthritis," "disk dislocation," "signs of * * * trauma," as well as "pressure on the nerves," specifically an "S1 * * * nerve root abutment" that was "almost a reason for [an] operation." *Id.* at 20.

When Rix asked whether he should have an operation, Registrant said that he "wouldn't do it," and added that "general statistics show that you should wait as long as you can before the surgery because even after the surgery some things don't work out" and that the surgery is done when the "indication is loss of nerve * * * showing muscle atrophy." *Id.* at 20–21. When Rix explained that he had not marked that area on the medical form, Registrant replied, "well I'll put lower back pain."[6] *Id.* at 22. As the TFO stated in his Affidavit, "it was obvious that my

[6] By that point, Registrant had apparently taken over the task of completing the medical form. *See* Tr. 15 (Aug. 6, 2009), at 15.

medical records would contain false information about fictitious pain." Aff. of TFO 1, at 5.

The visit concluded with Registrant issuing prescriptions for 180 oxycodone 30 mg pills, 90 oxycodone 15 mg pills, and 30 alprazolam 2 mg pills, which Registrant's wife filled for Rix. *Id.* Rix paid Registrant's wife $600 after deducting $20 for referring Anderson. *Id.*

On August 19, 2009, Anderson returned to the clinic (eleven days before his prescriptions should have run out) and sought more pain medication. Aff. of TFO 2, at 3; Tr. 1 (Aug. 19, 2009). Registrant advised him to "[t]ry next week" because if the police caught him with the drugs "they can make a big issue * * * out of it." Tr. 1 (Aug. 19, 2009). Anderson stated that he would be going to Georgia the next day, to which Registrant stated that "if they catch you on the road to Georgia that's even worse." *Id.* at 2. Registrant referred to the investigation of Michael Jackson's doctor and stated that there had been two recent overdose deaths in Broward County. Id. Registrant also expressed his concern that the police would follow Anderson from the clinic and stop him. *Id.* At this visit, Registrant did not write any prescriptions and told Anderson that he could come back a few days early, but he could not come back as early as he had this time. Aff. of TFO 2, at 3; Tr. 4 (Aug. 19, 2009).

Anderson returned to SMC on August 27, 2009. Aff. of TFO 2, at 3; Tr. 1 (Aug. 27, 2009). Anderson stated that he had not gone to Georgia, but that he would be leaving for Georgia imminently and that he wanted to increase his medications. Tr. 18 (Aug. 27, 2009). Registrant replied that it was the "[w]rong time," and that in the aftermath of Michael Jackson's death and the two recent overdose deaths in Broward County, "they have * * * extra workers inspecting, they got a lot of money from the government so they're scrutinizing." *Id.* at 19.

Anderson told Registrant that he only wanted oxycodone and Xanax, but not Soma or Percocet. *Id.* Anderson further stated that he had run out of oxycodone two weeks early and had bought additional oxycodone from a friend. *Id.* at 20–21.

Notwithstanding Anderson's statement, Registrant neither counseled him on the danger of addiction and abuse or that his purchase of oxycodone from a friend was illegal. Registrant agreed to give Anderson 90 oxycodone 30 mg, which was 30 more pills than he had given him the previous month, and 60 oxycodone 15 mg, which Anderson had not received at his first appointment. *Id.* at 22. Although Registrant stated that he would like to reduce Anderson's consumption of Xanax from 2 mg to 1 mg per day, when Anderson stated that he "would rather have the 2 mill," Registrant relented and agreed to prescribe the 2 mg strength. *Id.* at 23–24.

Registrant then told Anderson that he needed to complete the medical form, and Anderson asked "[w]hat numbers do I need" to put down for his pain levels. *Id.* While Registrant told Anderson that he should "[b]e honest," Registrant then advised him as to the value of the various numbers and agreed to sign after Anderson stated he would put down seven or eight for his pain level in the last week. *Id.* at 25–26. The visit concluded with Registrant giving Anderson prescriptions for 90 oxycodone 30 mg, 60 oxycodone 15 mg, and 30 alprazolam 2 mg, which were filled by Registrant's wife and for which he paid $400. Aff. of TFO 2, at 4. In his Affidavit, the TFO stated that Registrant did not do "any physical tests for pain response or movement restrictions" at this visit. *Id.*

On September 10, 2009, Rix returned to Registrant for the fourth time. Aff. of TFO 1, at 5; Tr. 1 (Sept. 10, 2009). Rix told Registrant that he had been out of town training to become a stunt man, "a job obviously incompatible with chronic pain." Aff. of TFO 1, at 5; Tr. 16 (Sept. 10, 2009). Registrant laughed and said: "You better keep a secret." Tr. 16 (Sept. 10, 2009). Rix then told Registrant that he had left the medical form "blank" so that "we can increase the medications because last time I didn't fill it out right," to which Registrant did not directly respond. *Id.* However, shortly thereafter Registrant wrote on the form that Rix stated that he "ran out of medication" and Registrant offered to increase the prescription for oxycodone 30 mg from 180 to 210 pills. *Id.* at 17. Registrant then stated that while he would increase the oxycodone, he would decrease the Xanax from 2 mg pills to 1 mg pills because "that makes [you] look reasonable." *Id.* at 18.

Next, Rix stated that he would refer a female client with knee pain. *Id.* at 19. Registrant stated that low back pain would be more "substantial" and that she could get an MRI done for just $250 at a couple of places. *Id.* Registrant told Rix that a new law passed in February would require that she be put on non-controlled substances unless she could present a pharmacy profile that showed she was already receiving controlled substances. *Id.* at 19–20.

Rix replied that the woman had said she had used controlled substances and that he had given her several of his oxycodone 15 mg pills, which she "tried" and reported feeling "good." *Id.* at 20. Registrant did not, however, tell Rix not to share his medication. *See id.* Rix then stated that he had only given the woman five oxycodone 15 mg pills, that he did not know "how she took em when she did it," and that "she said they helped." *Id.* at 21. Registrant replied, "No of course we will cover you, you know, but the question is does she * * * need that much." *Id.*

Registrant then noticed that Rix had left blank a certain question on the medical form and mentioned it to Rix. *Id.* at 23. Rix responded, "No remember you told me last time to leave that blank because I filled it out incorrectly where you said it couldn't increase the medicines." *Id.* at 24. Registrant replied: "If you could be thinking, insomnia." *Id.* Although Rix stated that he absolutely did not have insomnia, Registrant stated, "With Xanax, let's put down" insomnia. *Id.*

Registrant then asked Rix to rate numerically how his pain had affected his general activity in the prior week. *Id.* Rix answered that his pain did not interfere, "but that's where you told me we had to be careful because we couldn't increase" the drugs. *Id.* Continuing, Rix stated that "I put it didn't interfere at all last time and you said you could not increase [the drugs] because it said it does not interfere [and] I think you said last time to put three or four." Registrant responded, "Okay so three, mood about two?" *Id.*

The conversation then returned to Rix's having gone to a school for stunt men and his purported bad back. Registrant stated, "Oh I'm telling you * * * I shouldn't even know about it." *Id.* at 26. Registrant then said that "sometimes there will be people coming in here," specifically undercover officers. *Id.* at 28. Laughing, he stated that the undercover officers were "trying to provoke" him. *Id.* As they continued to discuss Rix's work as a stunt man, Rix assured Registrant that he would not do any such work in Florida. *Id.* Registrant then stated that "they could accuse" Rix of something and that the authorities might say that "your MRI is fake." *Id.* at 30.

Registrant then issued Rix prescriptions for 210 oxycodone 30 mg, 90 oxycodone 15 mg, and 30 Xanax (alprazolam) 1 mg, which were dispensed by the former's wife. Aff. of TFO 1, at 5. Rix paid $678 for the controlled substances and the visit. *Id.* at 5–6.

On January 7, 2010, a Federal Grand Jury indicted Registrant. *United States* v. *Algirdas Krisciunas et al.,* No. 10–60007–CR (S.D. Fla. Jan. 7, 2010)

(Indictment). The indictment charged Registrant with one count of conspiring with M.L.A. and M.I.R. (two of the clinic's staff) to distribute oxycodone, a controlled substance, "[f]rom on or before June 29, 2009 to on or about September 9, 2009," in violation of 21 U.S.C. 841(a)(1) and 846. *Id.* The indictment further charged Registrant with five counts of dispensing oxycodone (on July 13 and 30, August 6 and 27, and September 9, 2009), a controlled substance, in violation of 21 U.S.C. 841(a)(1). *Id.*

On March 11, 2010, a Federal Grand Jury issued a superseding indictment. *United States* v. *Algirdas Krisciunas and Maria Teresa Bulich,* Superseding Indictment (S.D. Fla. Mar. 11, 2010), No. 10–60007–CR–HURLEY(s). The new indictment charged Registrant and his wife with conspiring to unlawfully dispense oxycodone; it also charged Registrant and his wife with unlawfully dispensing oxycodone on each of the five dates as charged in the initial indictment. *Id.* at 1–3 (citing 21 U.S.C. 841(a)(1), 846).

Thereafter, Registrant went to trial. On July 6, 2010, a jury found Registrant guilty on all six counts. *U.S.* v. *Algirdas Krisciunas,* Verdict (July 6, 2010). On October 13, 2010, the District Court entered its Judgment adjudicating Registrant guilty on all six counts and sentenced him to 97 months imprisonment to be followed by three years of supervised release. *U.S.* v. *Algirdas Krisciunas,* Judgment (Oct. 13, 2010).

Based on Registrant's convictions, on August 20, 2010, the Florida Surgeon General ordered the summary suspension of his medical license. Order of Emergency Suspension of License, at 2–3 (citing Fla. Stat. § 456.074(1)).

Discussion

Section 304(a) of the CSA provides that a "registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has been convicted of a felony under this subchapter or subchapter II of this chapter * * * relating to any substance defined in this subchapter as a controlled substance." 21 U.S.C. 824(a)(2). Section 304(a) further provides that a registration may be revoked or suspended where a registrant "has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances."[7] *Id.* § 842(a)(3).

As found above, the United States District Court has adjudicated Registrant guilty of one count of conspiring to unlawfully distribute oxycodone, a schedule II controlled substance, in violation of 21 U.S.C. 846, and five counts of unlawfully dispensing oxycodone, in violation of 21 U.S.C. 841(a)(1). Both provisions are felonies under the CSA. *See* 21 U.S.C. 841(b)(1)(C) (except as otherwise provided, "[i]n the case of a controlled substance in schedule I or II * * * such person shall be sentenced to a term of imprisonment of not more than 20 years"); id. § 846 ("Any person who * * * conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the * * * conspiracy."). Registrant's convictions for these offenses provide reason alone to revoke his registration and denied any pending applications. 21 U.S.C. 824(a)(2).

I further conclude that Registrant's registration should be revoked on the ground that the State of Florida has suspended his State medical license and thus, he no longer has authority to dispense controlled substances in the State. 21 U.S.C. 824(a)(3). The CSA defines the term "practitioner" as a person "licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, dispense * * * [or] administer * * * a controlled substance in the course of professional practice." *Id.* § 802(21). Likewise, the CSA limits registration to an applicant who is "authorized to dispense * * * controlled substances under the laws of the State in which he practices." Id. § 823(f). Based on these provisions, DEA has held repeatedly that a practitioner whose State authority to dispense controlled substances has been suspended or revoked is not entitled to maintain his CSA registration. *See John B. Freitas,* 74 FR 17524, 17525 (2009); *Worth S. Wilkinson,* 71 FR 30173 (2006); *Stephen J. Graham,* 69 FR 11661, 11662 (2004); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). I therefore conclude that Registrant's loss of his State authority provides a further ground to revoke his registration and to deny any pending application to renew or modify his registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as by 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BK4015334, issued to Algirdas J. Krisciunas, M.D., be, and it hereby is, revoked. I further order that any pending application of Algirdas J. Krisciunas, M.D., to renew or modify his registration be, and it hereby is, denied. This Order is effective immediately.[8]

Dated: January 18, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–1693 Filed 1–26–11; 8:45 am]

BILLING CODE 4410–09–P

[7] Section 304(a)(4) also provides for the suspension or revocation of a registration "upon a finding that the registrant * * * has committed such acts as would render his registration * * * inconsistent with the public interest as determined under * * * section" 823(f). 21 U.S.C. 824(a)(4). In light of my finding that Registrant has been convicted of six felony counts of violating the CSA, I conclude that it is not necessary to discuss the applicability of this provision to his misconduct.

[8] For the same reason that I ordered the immediate suspension of Registrant's registration, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0030]

Ionizing Radiation Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Ionizing Radiation Standard (29 CFR 1910.1096). The information collection requirements contained in the Ionizing Radiation Standard protect workers from the adverse health effects that may result from occupational exposure to ionizing radiation including tissue damage and cancer.

DATES: Comments must be submitted (postmarked, sent, or received) by March 28, 2011.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0030, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0030). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney or Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The basic purpose of the information collection requirements in the Standard is to document that employers are providing their workers with protection from hazardous ionizing radiation exposure.

Several provisions of the Standard specify paperwork requirements, including: Monitoring of worker exposure to ionizing radiation, instructing workers on the hazards associated with ionizing radiation exposure and precautions to minimize exposure, posting of caution signs at radiation areas, reporting of worker overexposures to OSHA, maintaining exposure records, and providing exposure records to current and former workers.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements specified in the Ionizing Radiation Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

OSHA is requesting a 5,686 increase in burden hours from the current level of 39,531 hours to 45,217 hours. This request is being made because of the increased growth rate from previous estimates of exposed workers and of workers being monitored by employers. There is an adjustment increase in the estimated total cost from $2,341,440 to $5,691,144. This increase is a result of a rise in the cost of whole body monitoring and extremity monitoring badges.

Type of Review: Extension of a currently approved collection.

Title: Ionizing Radiation Standard (29 CFR 1910.1096).

OMB Number: 1218–0103.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal Government; State, Local or Tribal Governments.

Number of Respondents: 12,719.

Frequency: On Occasion; quarterly; annually; immediately; within 24 hours; within 30 days.

Total Responses: 256,914.

Average Time per Response: Time per response varies from 5 minutes (.08 hour) to maintain radiation exposure records to 20 minutes (.5 hours) for employers to gather and prepare training materials, and maintaining, compiling, and sending records to the worker.

Estimated Total Burden Hours: 45,217.

Estimated Cost (Operation and Maintenance): $5,691,144.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0030). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on January 21, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–1679 Filed 1–26–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

RIN 1235–0005

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Notice to Examinee, Employee Polygraph Protection Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 28, 2011.

ADDRESSES: You may submit comments identified by Control Number 1235–0005, by either one of the following methods: *E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division (WHD) of the Department of Labor (DOL) administers the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. 2001 *et seq.* The EPPA prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. The Act contains an exemption applicable to Federal, State and local government employers. The EPPA also contains several limited exemptions authorizing polygraph tests under certain conditions, including testing: (1) By the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions; (2) of employees the employer reasonably suspects of involvement in a workplace incident resulting in economic loss or injury to the employer's business; (3) of some prospective employees of private armored cars, security alarm and security guard firms; and (4) of some current and prospective employees of certain firms authorized to manufacture, distribute, or dispense controlled substances. The WHD may assess civil money penalties of up to $10,000 against employers who violate any EPPA provision.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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;
- 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 submissions of responses.

III. Current Actions

The DOL seeks an approval for the extension of this information collection that requires the keeping of records by examiners and employers as necessary or appropriate for the administration of the Act and the provision of certain notices to polygraph examiners and examinees.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Notice to Examinee, Employee Polygraph Protection Act.

OMB Number: 1235–0005.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Total Respondents: 593,400.

Total Annual Responses: 593,400.

Estimated Total Burden Hours: 68,739.

Estimated Time per Response: 30–45 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (operation/maintenance): $1,254,427.

Dated: January 20, 2011.

Michael Hancock,

Assistant Administrator for Policy.

[FR Doc. 2011–1595 Filed 1–26–11; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal & Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by March 28, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (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.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Sciences Foundation Proposal & Award Policies & Procedures Guide" OMB Approval Number: 3145–0058.

Expiration Date of Approval: September 30, 2013.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose:

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *"

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Over the years, NSF's statutory authority has been modified in a number of significant ways. In 1968, authority to support applied research was added to the Organic Act. In 1980, The Science and Engineering Equal Opportunities Act gave NSF standing authority to support activities to improve the participation of women and minorities in science and engineering.

Another major change occurred in 1986, when engineering was accorded equal status with science in the Organic Act. NSF has always dedicated itself to providing the leadership and vision needed to keep the words and ideas embedded in its mission statement fresh and up-to-date. Even in today's rapidly changing environment, NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last four decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 40,000 proposals annually for new projects, and makes approximately 10,500 new awards. Support is made primarily through grants, contracts, and other agreements awarded to more than 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 40,000 proposals are expected during the course of one year for a total of 4,800,000 public burden hours annually.

Dated: January 24, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–1754 Filed 1–26–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0020]

GE Hitachi Nuclear Energy; Notice of Receipt and Availability of an Application for Renewal of the U.S. Advanced Boiling Water Reactor Design Certification

On December 7, 2010, GE Hitachi Nuclear Energy (GEH) filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for a design certification (DC) renewal for the U.S. Advanced Boiling Water Reactor (ABWR).

An applicant may seek a DC Renewal in accordance with subpart B of 10 CFR part 52. The application was submitted in accordance with the requirements of 10 CFR 52.57(a). The information submitted by the applicant includes a request that the U.S. ABWR design certification be amended pursuant to 10 CFR 52.59(c); an aircraft impact assessment amendment pursuant to 10 CFR 50.150; and an environmental report pursuant to 10 CFR 52.47(b)(2) and 10 CFR 51.55(b).

Subsequent **Federal Register** notices will address the acceptability of the tendered DC Renewal application for docketing and provisions for participation of the public in the DC Renewal review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via 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*. The accession numbers for the application are ML110040175 and ML110040323. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-reactors/design-cert.html*.

Dated at Rockville, Maryland this 19th day of January 2011.

For the Nuclear Regulatory Commission.

Adrian Muñiz,

Project Manager, BWR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–1814 Filed 1–26–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63750; File No. 4–566]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

January 21, 2011.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed pursuant to Rule 17d–2 of the Act,[2] by and among BATS Exchange, Inc. ("BATS"), BATS Y-Exchange, Inc. ("BYX"), Chicago Board Options Exchange, Incorporated ("CBOE"), Chicago Stock Exchange, Inc. ("CHX"), EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), the Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., ("NASDAQ OMX BX"), NASDAQ OMX PHLX, LLC, ("NASDAQ OMX PHLX"), The NASDAQ Stock Market LLC ("Nasdaq"), National Stock Exchange, Inc. ("NSX"), New York Stock Exchange LLC ("NYSE"), NYSE Amex, LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca") (each a "Participating Organization" and collectively, "Participating Organizations" or "parties").

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common NYSE Members [12] or Common FINRA Members,[13] as applicable (collectively "Common Members"), for the surveillance, investigation, and enforcement of common insider trading rules ("Common Rules").[14] The Plan assigns regulatory responsibility over Common NYSE Members to NYSE Regulation for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NYSE-listed stocks and NYSE Arca-listed stocks, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur. The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to NASDAQ-listed stocks and Amex-listed stocks, as well as any CHX solely-listed stock, irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

III. Proposed Amendment to the Plan

On November 23, 2010, the Participating Organizations submitted an amendment to the Plan. The proposed amendment was submitted as a result of a recently completed agreement under which FINRA would assume responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets (NYSE, NYSE Arca and NYSE Amex). As part of this acquisition agreement, most of the NYSE personnel performing these responsibilities under the Plan have been transferred to FINRA. The Participating Organizations believe that consolidating surveillance, investigation, and enforcement for insider trading within FINRA will lead to a more unified and effective system of regulation.

Accordingly, the proposed amendment would modify the Plan to reflect that NYSE Regulation, Inc. would no longer perform any regulatory responsibilities under the Plan. Under the amended Plan, FINRA would perform surveillance, investigation, and enforcement of the common insider trading rules listed in the Plan with respect to equity securities listed on the NYSE, NASDAQ, NYSE Amex, NYSE Arca, or Chicago Stock Exchange, irrespective of the marketplaces maintained by the parties to the Plan. As with the current version of the Plan, FINRA will have regulatory responsibility for members of FINRA that are also members of at least one of the Participating Organizations. Separately, FINRA performs investigations and enforcement with respect to non-Common FINRA Members pursuant to a regulatory services agreement between FINRA and the other Participating Organizations. The amended Plan replaces the previous agreement in its entirety. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading Pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78q(d), and Rule 17d–2 Thereunder

This agreement (the "Agreement") by and among BATS Exchange, Inc. ("BATS"), BATS Y-Exchange, Inc. ("BYX"), Chicago Board Options Exchange, Inc. ("CBOE") *, Chicago Stock Exchange, Inc. ("CHX"), EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX[,] BX, Inc. ("*NASDAQ OMX* BX"), NASDAQ OMX PHLX LLC ("*NASDAQ OMX* PHLX"), The NASDAQ Stock Market LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX"), New York Stock Exchange[,] LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), *and* NYSE Arca, Inc. ("NYSE Arca")[, and NYSE Regulation, Inc. (pursuant to delegated authority) ("NYSE Regulation")] (*each a* "*Participating Organization*" *and* together, the "Participating Organizations"), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. § 78q(d), and Securities and Exchange Commission ("SEC") Rule 17d–2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations ("SROs"). Upon approval by the SEC, this Agreement shall amend and restate the agreement among the Participating Organizations [(except BYX)] approved by the SEC on [April 15]*October 14,* 2010.

[**WHEREAS,** NYSE delegates to NYSE Regulation the regulation of trading by members in its market, and NYSE Regulation is a subsidiary of NYSE, all references to NYSE Regulation in this Agreement shall be read as references to both entities;]

WHEREAS, the Participating Organizations desire to: (a) Foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). *See also* Securities Exchange Act Release Nos. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010); and 63103 (October 14, 2010), 75 FR 64755 (October 20, 2010).

[12] Common NYSE Members include members of the NYSE and at least one of the Participating Organizations.

[13] Common FINRA Members include members of FINRA and at least one of the Participating Organizations.

[14] Common rules are defined as: (i) Federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. *See* Exhibit A to the Plan.

* CBOE's allocation of certain regulatory responsibilities to [NYSE/]FINRA under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.

interest of investors; and (d) eliminate duplication in their regulatory surveillance, investigation and enforcement of insider trading;

[**WHEREAS,** the Participating Organizations are interested in allocating to NYSE Regulation regulatory responsibility for Common NYSE Members for surveillance, investigation and enforcement of Insider Trading (as defined below) in NYSE Listed Stocks (as defined below) irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur in violation of Common Insider Trading Rules;]

WHEREAS, the Participating Organizations are interested in allocating to FINRA regulatory responsibility for Common FINRA Members *(as defined below)* for surveillance, investigation and enforcement of Insider Trading *(as defined below)* in [NASDAQ] Listed Stocks *(as defined below)* [, Amex Listed Stocks, and CHX Solely Listed Stocks] irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur in violation of Common Insider Trading Rules *(as defined below);*

WHEREAS, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC a plan for the above stated purposes (this Agreement, also known herein as the "Plan") pursuant to the provisions of § 17(d) of the Act, and SEC Rule 17d–2 thereunder, as described below; and

WHEREAS, the Participating Organizations will also enter into [certain]*a* Regulatory Services Agreement[s] (the "Insider Trading RSA[s]"), of even date herewith, to provide for the investigation and enforcement of suspected Insider Trading against broker-dealers, and their associated persons, that [(i) are not Common NYSE Members (as defined below) in the case of Insider Trading in NYSE Listed Stocks, and (ii)] are not Common FINRA Members [(as defined below)] in the case of Insider Trading in [NASDAQ] Listed Stocks[, Amex Listed Stocks, and CHX Solely Listed Stocks].

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement, or the context otherwise requires, the terms used in this Agreement will have the same meaning they have under the Act, and the rules and regulations thereunder. As used in this Agreement, the following terms will have the following meanings:

a. "Rule" of an "exchange" or an "association" shall have the meaning defined in Section 3(a)(27) of the Act.

b. "Common [NYSE Members" shall mean members of the NYSE and at least one of the Participating Organizations.

c. "Common] FINRA Members" shall mean members of FINRA and at least one of the Participating Organizations.

[d]*c.* "Common Insider Trading Rules" shall mean (i) the federal securities laws and rules thereunder promulgated by the SEC pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading, as provided on Exhibit A to this Agreement.

[e]*d.* "Effective Date" shall have the meaning set forth in paragraph 28.

[f]*e.* "Insider Trading" shall mean any conduct or action taken by a natural person or entity related in any way to the trading of securities by an insider or a related party based on or on the basis of material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise misappropriated, that could be deemed a violation of the Common Insider Trading Rules.

[g]*f.* "Intellectual Property" will mean any: (1) processes, methodologies, procedures, or technology, whether or not patentable; (2) trademarks, copyrights, literary works or other works of authorship, service marks and trade secrets; or (3) software, systems, machine-readable texts and files and related documentation.

[h]*g.* "Plan" shall mean this Agreement, which is submitted as a Plan for the allocation of regulatory responsibilities of surveillance for insider trading pursuant to § 17(d) of the [Securities and Exchange] Act [of 1934], 15 U.S.C. § 78q(d), and SEC Rule 17d–2.

h. "*Listed Stock(s)*" *shall mean NYSE Listed Stock(s), NASDAQ Listed Stock(s), NYSE Amex Listed Stock(s), NYSE Arca Listed Stock(s) or CHX Solely Listed Stock(s).*

i. "NYSE Listed Stock" shall mean an equity security that is listed on the NYSE[, or NYSE Arca].

j. "NASDAQ Listed Stock" shall mean an equity security that is listed on [the] NASDAQ.

k. "*NYSE* Amex Listed Stock" shall mean an equity security that is listed on [the]*NYSE* Amex.

l. "*NYSE Arca Listed Stock*" *shall mean an equity security that is listed on NYSE Arca.*

[l]*m.* "CHX Solely Listed Stock" shall mean an equity security that is listed only [in]*on* the [Chicago Stock Exchange]*CHX.*

[m]*n.* "Listing Market" shall mean *NYSE* Amex, [Nasdaq]*NASDAQ,* NYSE, or NYSE Arca, but not CHX.

2. *Assumption of Regulatory Responsibilities.*

[a. *NYSE Regulation: Assumption of Regulatory Responsibilities.* On the Effective Date of the Plan, NYSE Regulation will assume regulatory responsibilities for surveillance, investigation and enforcement of Insider Trading by broker-dealers, and their associated persons, for Common NYSE Members with respect to NYSE Listed Stocks irrespective of the marketplace(s) maintained by the Participant Organizations on which the relevant trading may occur in violation of the Common Insider Trading Rules ("NYSE's Regulatory Responsibility").]

[b. *FINRA: Assumption of Regulatory Responsibilities.*] On the Effective Date of the Plan, FINRA will assume regulatory responsibilities for surveillance, investigation and enforcement of Insider Trading by broker-dealers, and their associated persons, for Common FINRA Members with respect to [NASDAQ and Amex] Listed Stocks, [as well as any CHX Solely Listed equity security,] irrespective of the marketplace(s) maintained by the Participant Organizations on which the relevant trading may occur in violation of the Common Insider Trading Rules ("[FINRA's] Regulatory Responsibilit[y]*ies*").

[c. *Change in Control.* In the event of a change of control of a Listing Market, the Listing Market will have the discretion to transfer the regulatory responsibility for its listed stocks from NYSE Regulation to FINRA or from FINRA to NYSE Regulation, provided the SRO assuming regulatory responsibility consents to such transfer.]

3. *Certification of Insider Trading Rules.*

a. *Initial Certification.* By signing this Agreement, the Participating Organizations, other than [NYSE Regulation and] FINRA, hereby certify to [NYSE Regulation and] FINRA that their respective lists of Common Insider Trading Rules contained in [Attachment]*Exhibit* A hereto are correct, and [NYSE Regulation and] FINRA hereby confirm*s* that such rules are Common Insider Trading Rules as defined in this Agreement.

b. *Yearly Certification.* Each year following the commencement of operation of this Agreement, or more frequently if required by changes in the

rules of the Participating Organizations, each Participating Organization shall submit a certified and updated list of Common Insider Trading Rules to [NYSE Regulation and] FINRA for review, which shall (i) add Participating Organization rules not included in the then-current list of Common Insider Trading Rules that qualify as Common *Insider Trading* Rules as defined in this Agreement; (ii) delete Participating Organization rules included in the current list of Common Insider Trading Rules that no longer qualify as Common Insider Trading Rules as defined in this Agreement; and (iii) confirm that the remaining rules on the current list of Common Insider Trading Rules continue to be Participating Organization rules that qualify as Common Insider Trading Rules as defined in this Agreement. [NYSE Regulation and] FINRA shall review each Participating Organization's annual certification and confirm whether [NYSE Regulation and] FINRA agree*s* with the submitted certified and updated list of Common Insider *Trading* Rules by each of the Participating Organizations.

4. *No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by [NYSE Regulation and] FINRA[, respectively,] under the terms of this Agreement. [Nothing in this Agreement will be interpreted to prevent NYSE Regulation or FINRA from entering into Regulatory Services Agreement(s) to perform their Regulatory Responsibilities.]

5. *Dually Listed Stocks.* Stocks that are listed on more than one Participating Organization shall be designated as a*n* NYSE Listed Stock, a NASDAQ Listed Stock, *an NYSE Arca Listed Stock* or an *NYSE* Amex Listed Stock based on the applicable transaction reporting plan for the equity security as set forth in paragraph 1.b. of Exhibit B.

6. *Fees.* [NYSE Regulation and] FINRA shall charge Participating Organizations for performing [their respective]*the* Regulatory Responsibilities, as set forth in the Schedule of Fees, attached as Exhibit B.

7. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

8. *Exchange Committee; Reports.*

a. *Exchange Committee.* The Participating Organizations shall form a committee (the "Exchange Committee"), which shall act on behalf of all of Participating Organizations in receiving copies of the reports described below and in reviewing issues that arise under this Agreement. Each Participating Organization shall appoint a representative to the Exchange Committee. The Exchange Committee representatives shall report to their respective executive management bodies regarding status or issues under [the]*this* Agreement. The Participating Organizations agree that the Exchange Committee will meet regularly up to four (4) times a year, with no more than one meeting per calendar quarter. At these meetings, the Exchange Committee will discuss the conduct of the Regulatory Responsibilities and identify issues or concerns with respect to this Agreement, including matters related to the calculation of the cost formula and accuracy of fees charged and provision of information related to the same. The SEC shall be permitted to attend the meetings as an observer.

b. *Reports.* [NYSE Regulation and] FINRA shall provide the reports set forth in Exhibit C hereto and any additional reports related to [the]*this* Agreement reasonably requested by a majority vote of all representatives to the Exchange Committee at each Exchange Committee meeting, or more often as the Participating Organizations deem appropriate, but no more often than once every quarterly billing period.

9. *Customer Complaints.*

[a. If a Participating Organization receives a copy of a customer complaint relating to Insider Trading or other activity or conduct that is within the NYSE's Regulatory Responsibilities as set forth in this Agreement, the Participating Organization shall promptly forward to NYSE Regulation, as applicable, a copy of such customer complaint.

b.]If a Participating Organization receives a copy of a customer complaint relating to Insider Trading or other activity or conduct that is within FINRA's Regulatory Responsibilities as set forth in this Agreement, the Participating Organization shall promptly forward to FINRA, as applicable, a copy of such customer complaint.

10. *Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to [NYSE Regulation or] FINRA to serve as testimonial or non-testimonial witnesses as necessary to assist [NYSE Regulation and] FINRA in fulfilling the Regulatory Responsibilities allocated under this Agreement. FINRA [and NYSE Regulation] shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entit[ies]y with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that [NYSE Regulation or] FINRA require*s* such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

11. *Market Data; Sharing of Work-Papers, Data and Related Information.*

a. *Market Data.* FINRA [and NYSE Regulation] shall obtain raw market data necessary to the performance of regulation under this Agreement from (a) the Consolidated Tape Association ("CTA") as the exclusive securities information processor ("SIP") for all NYSE[-listed, AMEX-listed securities,]*Listed Stocks, NYSE Amex Listed Stocks, NYSE Arca Listed Stocks* and CHX [solely listed securities]*Solely Listed Stocks* and (b) the NASDAQ Unlisted Trading Privileges Plan as the exclusive SIP for *all* NASDAQ[-listed securities] *Listed Stocks.*

b. *Sharing.* A Participating Organization shall make available to [each of NYSE Regulation and] FINRA information necessary to assist [NYSE Regulation or] FINRA in fulfilling the [regulatory responsibilities]*Regulatory Responsibilities* assumed under the terms of this Agreement. Such information shall include any information collected by [an exchange or association]*a Participating Organization* in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member ("Regulatory Information"). This Regulatory Information shall be used by [NYSE Regulation and] FINRA solely for the purposes of fulfilling [their respective regulatory responsibilities]*its Regulatory Responsibilities.*

c. *No Waiver of Privilege.* The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against

third parties of regulatory or other privileges relating to the discovery of documents or information.

d. *Intellectual Property.*

(i) *Existing Intellectual Property.* [Each of NYSE Regulation and] FINRA[, respectively,] is and will remain the owner of all right, title and interest in and to the proprietary Intellectual Property it employs in the provision of regulation hereunder (including the SONAR and Stock Watch systems), and any derivative works thereof. To the extent certain elements of [either of these parties']FINRA's systems, or portions thereof, may be licensed or leased from third parties, all such third party elements shall remain the property of such third parties, as applicable. Likewise, any other Participating Organization is and will remain the owner of all right, title and interest in and to its own existing proprietary Intellectual Property.

(ii) *Enhancements to Existing Intellectual Property or New Developments*[of NYSE Regulation or FINRA]. In the event [NYSE Regulation or] FINRA (a) makes any changes, modifications or enhancements to its [respective] Intellectual Property for any reason, or (b) creates any newly developed Intellectual Property for any reason, including as a result of requested enhancements or new development by the Exchange Committee (collectively, the "New IP"), the Participating Organizations acknowledge and agree that [each of NYSE Regulation and] FINRA shall be deemed the owner of the New IP created by [each of them, respectively]*it* (and any derivative works thereof), and shall retain all right, title and interest therein and thereto, and each other Participating Organization hereby irrevocably assigns, transfers and conveys to [each of NYSE Regulation and] FINRA[, as applicable,] without further consideration all of its right, title and interest in or to all such New IP (and any derivative works thereof).

(iii) *Fees for New IP.* [NYSE Regulation and] FINRA will not charge the Participating Organizations any fees for any New IP created and used by [NYSE Regulation or] FINRA[, respectively]; provided, however, that [NYSE Regulation and] FINRA will [each] be permitted to charge fees for software maintenance work performed on systems used in the discharge of [their respective]*its* duties hereunder.

12. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of [Common NYSE Members or] Common FINRA Members as any party, in its sole discretion, shall deem appropriate or necessary.

13. *Dispute Resolution Under this Agreement.*

a. *Negotiation.* The [P]*p*arties *to this Agreement* will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the [P]*p*arties shall refer the dispute to binding arbitration.

b. *Binding Arbitration.* All claims, disputes, controversies, and other matters in question between the [P]*p*arties to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the [P]*p*arties will be resolved through binding arbitration. Unless otherwise agreed by the [P]*p*arties, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in the city of New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney.

14. *Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except (a) as otherwise provided for under the Act, (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization, (c) in instances of a breach of confidentiality obligations owed to another Participating Organization, or (d) in the case of any Participating Organization paying fees hereunder, for any payments due. The Participating Organizations understand and agree that the [regulatory responsibilities]*Regulatory Responsibilities* are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

15. *SEC Approval.*

a. The parties agree to file promptly this Agreement with the SEC for its review and approval. [NYSE Regulation and] FINRA shall [jointly] file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of [the]*this* Agreement and of its impact on their members.

16. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

17. *Assignment.* No Participating Organization may assign this Agreement without the prior written consent of all the other Participating Organizations, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign [the]*this* Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of any other party.

18. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Termination.*

a. Any Participating Organization may cancel its participation in [the]*this* Agreement at any time, provided that it has given 180 days written notice to the other Participating Organizations (or in the case of a change of control in

ownership of a Participating Organization, such other notice time period as that Participating Organization may choose), and provided that such termination has been approved by the SEC. The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

b. The Regulatory Responsibilities assumed under this Agreement by [NYSE Regulation or] FINRA [(either, an "Invoicing Party")] may be terminated by [the Invoicing Party]*FINRA* against any Participating Organization as follows. The Participating Organization will have thirty (30) days from receipt to satisfy the invoice. If the Participating Organization fails to satisfy the invoice within thirty (30) days of receipt ("Default"), [the Invoicing Party]*FINRA* will notify the Participating Organization of the Default. The Participating Organization will have thirty (30) days from receipt of the Default notice to satisfy the invoice.

c. [The Invoicing Party] *FINRA* will have the right to terminate the Regulatory Responsibilities assumed under this Agreement if a Participating Organization has Defaulted in its obligation to pay the invoice on more than three (3) occasions in any rolling twenty-four (24) month period.

20. *Intermarket Surveillance Group ("ISG").* In order to participate in this Agreement, all Participating Organizations to this Agreement must be members of the ISG.

21. *General.* The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

22. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified below, as applicable. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

* * * * *

23. *Confidentiality.* The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement. No party shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement, as defined by paragraph 11, above.

24. *Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, the Participating Organizations jointly and severally request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations, jointly and severally, of any and all responsibilities with respect to the matters allocated to [NYSE Regulation and] FINRA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

25. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

26. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by [NYSE Regulation or] FINRA[, as applicable,] the payment of the Fees by the Participating Organizations, and any expiration of this Agreement shall survive and continue.

27. *Amendment.*

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by [NYSE Regulation,] FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow [NYSE Regulation and] FINRA to [jointly] add new Participating Organizations to [the]*this* Agreement as provided above. [NYSE Regulation and] FINRA will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be [made] approved by each Participating Organization. All amendments, including adding a new Participating Organization, must be filed with and approved by the [Commission]*SEC* before they become effective.

28. *Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and SEC Rule 17d–2 thereunder.

29. *Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the [P]*p*arties.

* * * * *

EXHIBIT A: COMMON INSIDER TRADING RULES

1. Securities Exchange Act of 1934 Section 10(b), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 10b–5 (as it pertains to insider trading), which states that:

Rule 10b–5—Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

2. Securities Exchange Act of 1934 Section 17(a), and rules and regulations promulgated thereunder in connection with insider trading, including SEC Rule 17a–3 (as it pertains to insider trading).

3. The following SRO Rules as they pertain to violations of insider trading:

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)
FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
FINRA NASD Rule 3010 (Supervision)
FINRA NASD Rule 3110 (a) and (c) (Books and Records; Financial Condition)
NYSE Rule 401(a) (Business Conduct)
NYSE Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others)
NYSE Rule 440 (Books and Records)
NYSE Rule 342 (Offices—Approval, Supervision and Control)

NYSE AMEX Cons. Art. II Sec. 3, Confidential Information
NYSE AMEX Cons. Art. V Sec. 4 Suspension or Expulsion (b), (h), (i), (j) and (r)
NYSE AMEX Cons. Art. XI Sec. 4 Controlled Corporations and Associations—Responsibility for Corporate Subsidiary; Duty to Produce Books
NYSE AMEX Rule 3 General Prohibitions and Duty to Report (d), (h) (j) and (l)
NYSE AMEX Rule 3–AEMI General Prohibitions and Duty to Report (d) and (h)
NYSE AMEX Rule 16 Business Conduct
NYSE AMEX Rule 320 Offices—Approval, Supervision and Control
NYSE AMEX Rule 324 Books and Records
NASDAQ *OMX* Rule 2110 (Standards of Commercial Honor and Principles of Trade)
NASDAQ *OMX* Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NASDAQ *OMX* Rule 3010 (Supervision)
NASDAQ *OMX* Rule 3110 (a) and (c) (Books and Records; Financial Condition)
CHX Article 8, Rule 3 (Fraudulent Acts)
CHX Article 9, Rule 2 (Just & Equitable Trade Principles)
CHX Article 11, Rule 2 (Maintenance of Books and Records)
CHX Article 6, Rule 5 (Supervision of Registered Persons and Branch and Resident Offices)
CBOE [RULE]*Rule* 4.1 (Practices inconsistent with just and equitable principles)
CBOE [RULE]*Rule* 4.2 (adherence to law)
CBOE [RULE]*Rule* 4.7 (Manipulation)
CBOE [RULE]*Rule* 4.18 (Prevention of the misuse of material nonpublic information)
NASDAQ OMX PHLX [RULE]*Rule* 707 (Conduct Inconsistent with Just and Equitable Principles of Trade)
NASDAQ OMX PHLX [RULE]*Rule* 748 (Supervision)
NASDAQ OMX PHLX [RULE]*Rule* 760 (Maintenance, Retention and Furnishing of Books, Records and Other Information)
NASDAQ OMX PHLX [RULE]*Rule* 761 (Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse or Material Nonpublic Information)
NASDAQ OMX PHLX [RULE]*Rule* 782 (Manipulative Operations)
NYSE Arca Rule 6.3 (Prevention of the Misuse of Material, Nonpublic Information)
NYSE Arca Rule 6.2(b) Prohibited Acts (J&E)
NYSE Arca Rule 6.1 Adherence to Law
NYSE Arca Rule 6.18 Supervision
NYSE Arca Rule 9.1(c) Office Supervision
NYSE Arca Rule 9.2(b) Account Supervision
NYSE Arca Rule 9.2(c) Customer Records
NYSE Arca Rule 9.17 Books and Records
NSX Rule 3.1 Business Conduct of ETP Holders
NSX Rule 3.2[.] Violations Prohibited
NSX Rule 3.3[.] Use of Fraudulent Devices
NSX Rule 4.1 Requirements
NSX Rule 5.1[.] Written Procedures
NSX Rule 5.3 Records
NSX Rule 5.5 Chinese Wall Procedures
NASDAQ OMX BX Rule 2110 (Standards of Commercial Honor and Principles of Trade)
NASDAQ OMX BX Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent
Devices)
NASDAQ OMX BX Rule 3010 (Supervision)
NASDAQ OMX BX Rule 3110 (a) and (c) (Books and Records; Financial Condition)
BATS Rule 3.1 Business Conduct of [ETP Holders]*Members*
BATS Rule 3.2[.] Violations Prohibited
BATS Rule 3.3[.] Use of Fraudulent Devices
BATS Rule 4.1 Requirements
BATS Rule 5.1[.] Written Procedures
BATS Rule 5.3 Records
BATS Rule 5.5 Prevention of the Misuse of Material, Non-Public Information
BATS Rule 12.4 Manipulative Transactions
BYX Rule 3.1 Business Conduct of ETP Holders
BYX Rule 3.2[.] Violations Prohibited
BYX Rule 3.3[.] Use of Fraudulent Devices
BYX Rule 4.1 Requirements
BYX Rule 5.1[.] Written Procedures
BYX Rule 5.3 Records
BYX Rule 5.5 Prevention of the Misuse of Material, Non-Public Information
BYX Rule 12.4 Manipulative Transactions
EDGA 3.1 Business Conduct of Members
EDGA 3.2 Violations Prohibited
EDGA 3.3 Use of Fraudulent Devices
EDGA 4.1 Requirements
EDGA 5.1 Written Procedures
EDGA 5.3 Records
EDGA 5.5 Prevention of misuse of material, nonpublic information
EDGA 12.4 Manipulative Transactions
EDGX 3.1 Business Conduct of Members
EDGX 3.2 Violations Prohibited
EDGX 3.3 Use of Fraudulent Devices
EDGX 4.1 Requirements
EDGX 5.1 Written Procedures
EDGX 5.3 Records
EDGX 5.5 Prevention of misuse of material, nonpublic information
EDGX 12.4 Manipulative Transactions

EXHIBIT B: FEE SCHEDULE

1. *Fees.* [NYSE Regulation and, separately,] FINRA shall charge each Participating Organization a Quarterly Fee in arrears for the performance of [NYSE Regulation's and] FINRA's [respective regulatory responsibilities]*Regulatory Responsibilities* under the Plan (each, a "Quarterly Fee,"[,] and together, the "Fees").

a. *Quarterly Fees.*

(1) Quarterly Fees for each Participating Organization will be charged by [NYSE Regulation and] FINRA[, respectively,] according to the Participating Organization's "Percentage of Publicly Reported Trades" occurring over three-month billing periods. The "Percentage of Publicly Reported Trades" shall equal a Participating Organization's number of reported [NYSE-listed]*Listed Stock* trades [(when billing originates from NYSE Regulation) and combined AMEX-listed, NASDAQ-listed, and CHX solely-listed trades (when billing originates from FINRA)] during the relevant period (the "Numerator"), divided by the total number of [either all NYSE-listed trades or all combined AMEX-listed, NASDAQ-listed, and CHX solelylisted trades, respectively,]*all Listed Stock trades* for the same period (the "Denominator"). For purposes of clarification, ADF and Trade Reporting Facility ("TRF") activity will be included in the Denominator. Additionally, with regard to TRFs, TRF trade volume will be charged to FINRA. Consequently, for purposes of calculating the Quarterly Fees, the volume for each Participant Organization's TRF will be calculated separately (that is, TRF volume will be broken out from the Participating Organization's overall Percentage of Publicly Reported Trades) and the fees for such will be billed to FINRA in accordance with paragraph 1[(]a[)].(2), rather than to the applicable Participating Organization.

(2) The Quarterly Fees shall be determined by [each of NYSE Regulation and] FINRA[, as applicable,] in the following manner for each Participating Organization:

(a) Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for [NYSE-listed trades (in the case of NYSE Regulation) or for combined AMEX-listed, NASDAQ-listed, and CHX solelylisted trades (in the case of FINRA) for] the relevant three-month billing period is less than

1.0%, the Quarterly Fee shall be $[3,125]*6,250,* per quarter ("Static Fee");

(b) Less than 2.0% but No Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for [NYSE-listed trades (in the case of NYSE Regulation) or for combined AMEX-listed, NASDAQ-listed, and CHX solely-listed trades (in the case of FINRA) for] the relevant three-month billing period is less than 2.0% but no less than 1.0%, the Quarterly Fee shall be $[9,375]*18,750,* per quarter ("Static Fee");

(c) 2.0% or Greater: If the Participating Organization's Percentage of Publicly Reported Trades for [NYSE-listed trades (in the case of NYSE Regulation) or for combined AMEX-listed, NASDAQ-listed, and CHX solely listed trades (in the case of FINRA) for] the relevant three-month billing period is 2.0% or greater, the Quarterly Fee shall be the amount equal to the Participating Organization's Percentage of Publicly Reported Trades multiplied by [NYSE Regulation's or] FINRA's total charge ("Total Charge")[, respectively,] for its performance of [Insider Trading regulatory responsibilities]*Regulatory Responsibilities* for the relevant three-month billing period.

(3) Increases in Static Fees. [NYSE Regulation and] FINRA will re-evaluate the Quarterly Fees on an annual basis during the annual budget process outlined in paragraph 1.c. below. During each annual re-evaluation, [NYSE Regulation and] FINRA will have the discretion to increase the Static Fees by a percentage no greater than the percentage increase in the Final Budget over the preceding year's Final Budget. Any changes to the Static Fees shall not require an amendment to this Agreement, but rather shall be memorialized through the [B]*b*udget [P]*p*rocess.

(4) Increases in Total Charges. Any change in the Total Charges (whether a Final Budget increase or any mid year change) shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

b. *Source of Data.* For purposes of calculation of the Percentage of Publicly Reported Trades for each Participating Organization, [NYSE Regulation and] FINRA shall use (a) the Consolidated Tape Association ("CTA") as the exclusive securities information processor ("SIP") for all NYSE Listed Stocks, [AMEX]*NYSE Amex* Listed Stocks, *NYSE Arca Listed Stocks* and CHX Solely Listed Stocks, and (b) the Unlisted Trading Privileges Plan as the exclusive SIP for NASDAQ[-l] *L*isted Stocks.

c. *Annual Budget Forecast.* [NYSE Regulation and] FINRA will notify the Participating Organizations of the forecasted costs of [their respective]*its* insider trading program[s] for the following calendar year by close of business on October 15 of the then-current year (the "Forecasted Budget"). [NYSE Regulation and] FINRA shall use best efforts to provide as accurate a forecast as possible. [NYSE Regulation and] FINRA shall then provide a final submission of the costs following approval of such costs by [their respective governing Boards]*its Board of Governors* (the "Final Budget"). Subject to paragraph 1[(]d[)]. below, in the event of a difference between the Forecasted Budget and the Final Budget, the Final Budget will govern.

d. Increases in Fees over [Twenty]Five Percent.

(1) In the event that any proposed increase to Fees [by NYSE Regulation or] by FINRA for a given calendar year (which increase may arise either during the annual budgetary forecasting process or through any mid-year increase) will result in a cumulative increase in such calendar year's Fees of more than [twenty]*five* percent ([20]*5*%) above the preceding calendar year's Final Budget (a "Major Increase"), then senior management of any Participating Organization (a) that is a Listing Market or (b) for which the Percentage of Publicly Reported Trades is then currently twenty percent (20%) or greater, shall have the right to call a meeting with the senior management of [NYSE Regulation or] FINRA[, respectively,] in order to discuss any disagreement over such proposed Major Increase. By way of example, if [NYSE Regulation]*FINRA* provides a Final Budget for [2009]*2011* that represents an [8]*4*% increase above the Final Budget for [2008]*2010,* the terms of this paragraph 1.d.(1) shall not apply; if, however, in April of [2009, NYSE Regulation]*2011, FINRA* notifies the Exchange Committee of an increase in Fees that represents an additional [14]*3*% increase above the Final Budget for [2008]*2010,* then the increase shall be deemed a Major Increase, and the terms of this paragraph 1.d.(1) shall become applicable (i.e., [8% + 14% =]*4% and 3% represents* a cumulative increase of [22]*7*% above [2008]*the 2010* Final Budget).

(2) In the event that senior management members of the involved parties are unable to reach an agreement regarding the proposed Major Increase, then the matter shall be referred back to the Exchange Committee for final resolution. Prior to the matter being referred back to the Exchange Committee, nothing shall prohibit the parties from conferring with the SEC. Resolution shall be reached through a vote of no fewer than all Participating Organizations seated on the Exchange Committee, and a simple majority shall be required in order to reject the proposed Major Increase.

e. *Time Tracking.* [NYSER and] FINRA shall track the time spent by staff on insider trading responsibilities under this Agreement; however, time tracking will not be used to allocate costs.

2. *Invoicing and Payment.*[

a. NYSE Regulation shall invoice each Participating Organization for the Quarterly Fee associated with the regulatory activities performed pursuant to this Agreement during the previous three-month billing period within forty five (45) days of the end of such previous 3-month billing period. A Participating Organization shall have thirty (30) days from date of invoice to make payment to NYSE Regulation on such invoice. The invoice will reflect the Participating Organization's Percentage of Publicly Reported Trades for that billing period.

b.]FINRA shall invoice each Participating Organization for the Quarterly Fee associated with the regulatory activities performed pursuant to this Agreement during the previous three-month billing period within forty five (45) days of the end of such previous 3-month billing period. A Participating Organization shall have thirty (30) days from date of invoice to make payment to FINRA on such invoice. The invoice will reflect the Participating Organization's Percentage of Publicly Reported Trades for that billing period.

3. *Disputed Invoices; Interest.* In the event that a Participating Organization disputes an invoice or a portion of an invoice, the Participating Organization shall notify [in writing either FINRA or NYSE Regulation (each, an "Invoicing Party"), as applicable,] *FINRA in writing* of the disputed item(s) within fifteen (15) days of receipt of the invoice. In its notification to [the Invoicing Party]*FINRA* of the disputed invoice, the Participating Organization shall identify the disputed item(s) and provide a brief explanation of why the Participating Organization disputes the charges. [An Invoicing Party]*FINRA* may charge a Participating Organization interest on any undisputed invoice or the undisputed portions of a disputed invoice that a Participating Organization fails to pay within thirty (30) days of its receipt of such invoice. Such interest shall be assessed monthly. Interest will mean one and one half percent per month, or the maximum allowable

under applicable [L]*l*aw, whichever is less.

4. *Taxes.* In the event any governmental authority deems the regulatory activities allocated to [NYSE Regulation or] FINRA to be taxable activities similar to the provision of services in a commercial context, the other Participating Organizations agree that they shall bear full responsibility, on a joint and several basis, for the payment of any such taxes levied on [NYSE Regulation or] FINRA, or, if such taxes are paid by [NYSE Regulation or] FINRA directly to the governmental authority, the other Participating Organizations agree that they shall reimburse [NYSE Regulation and/or] *FINRA*[, as applicable,] for the amount of any such taxes paid.

5. *Audit Right; Record Keeping.*

a. *Audit Right.*

[(i) Audit of NYSE Regulation.]

[(a) Once every rolling twelve (12) month period, NYSE Regulation shall permit no more than one audit (to be performed by one or more Participating Organizations) of the Fees charged by NYSE Regulation to the Participating Organizations hereunder and a detailed cost analysis supporting such Fees (the "Audit"). The Participating Organization or Organizations that conduct this Audit will select a nationally-recognized independent auditing firm (or may use its regular independent auditor, providing it is a nationally-recognized auditing firm) ("Auditing Firm") to act on its, or their behalf, and will provide reasonable notice to other Participating Organizations of the Audit and invite the other Participating Organizations to participate in the Audit. NYSE Regulation will permit the Auditing Firm reasonable access during NYSE Regulation's normal business hours, with reasonable advance notice, to such financial records and supporting documentation as are necessary to permit review of the accuracy of the calculation of the Fees charged to the Participating Organizations. The Participating Organization, or Organizations, as applicable, other than NYSE Regulation, shall be responsible for the costs of performing any such audit.]

[(b) If, through an Audit, the Exchange Committee determines that NYSE Regulation has inaccurately calculated the Fees for any Participating Organization, the Exchange Committee will promptly notify NYSE Regulation in writing of the amount of such difference in the Fees, and, if applicable, NYSE Regulation shall issue a reimbursement of the overage amount to the relevant Participating Organization(s), less any amount owed by the Participating Organization under any outstanding, undisputed invoice(s). If such an Audit reveals that any Participating Organization paid less than what was required pursuant to the Agreement, then that Participating Organization shall promptly pay NYSE Regulation the difference between what the Participating Organization owed pursuant to the Agreement and what that Participating Organization originally paid NYSE Regulation. If NYSE Regulation disputes the results of an audit regarding the accuracy of the Fees, it will submit the dispute for resolution pursuant to the dispute resolution procedures in paragraph 13 hereof.]

[(c) In the event that through the review of any supporting documentation provided during the Audit, any one or more Participating Organizations desire to discuss with NYSE Regulation the supporting documentation and any questions arising therefrom with regard to the manner in which regulation was conducted, the Participating Organization(s) shall call a meeting with NYSE Regulation. NYSE Regulation shall in turn notify the Exchange Committee of this meeting in advance, and all Participating Organizations shall be welcome to attend (the "Fee Analysis Meeting"). The parties to this Agreement acknowledge and agree that while NYSE Regulation commits to discuss the supporting documentation at the Fee Analysis Meeting, NYSE Regulation shall not be subject, by virtue of the above Audit rights or any discussions during the Fee Analysis Meeting or otherwise, to any limitation whatsoever, other than the Increase in Fee provisions set forth in paragraph 1.d. of this Exhibit, on its discretion as to the manner and means by which it conducts its regulatory efforts in its role as the SRO primarily liable for regulatory decisions under this Agreement. To that end, no disagreement among the Participating Organizations as to the manner or means by which NYSE Regulation conducts its regulatory efforts hereunder shall be subject to the dispute resolution procedures hereunder, and no Participating Organization shall have the right to compel NYSE Regulation to alter the manner or means by which it conducts its regulatory efforts. Further, a Participating Organization shall not have the right to compel a rebate or reassessment of fees for services rendered, on the basis that the Participating Organization would have conducted regulatory efforts in a different manner than NYSE Regulation in its professional judgment chose to conduct its regulatory efforts.]

[ii. Audit of FINRA.]

[(a)]*(i)* Once every rolling twelve (12) month period, FINRA shall permit no more than one audit (to be performed by one or more Participating Organizations) of the Fees charged by FINRA to the Participating Organizations hereunder and a detailed cost analysis supporting such Fees (the "Audit"). The Participating Organization or Organizations that conduct this Audit will select a nationally-recognized independent auditing firm (or may use its regular independent auditor, providing it is a nationally-recognized auditing firm) ("Auditing Firm") to act on its, or their behalf, and will provide reasonable notice to other Participating Organizations of the Audit. FINRA will permit the Auditing Firm reasonable access during FINRA's normal business hours, with reasonable advance notice, to such financial records and supporting documentation as are necessary to permit review of the accuracy of the calculation of the Fees charged to the Participating Organizations. The Participating Organization, or Organizations, as applicable, other than FINRA, shall be responsible for the costs of performing any such audit.

[(b)]*(ii)* If, through an Audit, the Exchange Committee determines that FINRA has inaccurately calculated the Fees for any Participating Organization, the Exchange Committee will promptly notify FINRA in writing of the amount of such difference in the Fees, and, if applicable, FINRA shall issue a reimbursement of the overage amount to the relevant Participating Organization(s), less any amount owed by the Participating Organization under any outstanding, undisputed invoice(s). If such an Audit reveals that any Participating Organization paid less than what was required pursuant to the Agreement, then that Participating Organization shall promptly pay FINRA the difference between what the Participating Organization owed pursuant to the Agreement and what that Participating Organization originally paid FINRA. If FINRA disputes the results of an [a]*A*udit regarding the accuracy of the Fees, it will submit the dispute for resolution pursuant to the dispute resolution procedures in paragraph 13 [hereof]*of the Agreement.*

[(c)]*(iii)* In the event that through the review of any supporting documentation provided during the Audit, any one or more Participating Organizations desire to discuss with FINRA the supporting documentation and any questions arising therefrom

with regard to the manner in which regulation was conducted, the Participating Organization(s) shall call a meeting with FINRA. FINRA shall in turn notify the Exchange Committee of this meeting in advance, and all Participating Organizations shall be welcome to attend (the "Fee Analysis Meeting"). The parties to this Agreement acknowledge and agree that while FINRA commits to discuss the supporting documentation at the Fee Analysis Meeting, FINRA shall not be subject, by virtue of the above Audit rights or any discussions during the Fee Analysis Meeting or otherwise, to any limitation whatsoever, other than the Increase in Fee provisions set forth in paragraph 1.d. of this Exhibit, on its discretion as to the manner and means by which it conducts its regulatory efforts in its role as the SRO primarily liable for regulatory decisions under this Agreement. To that end, no disagreement among the Participating Organizations as to the manner or means by which FINRA conducts its regulatory efforts hereunder shall be subject to the dispute resolution procedures hereunder, and no Participating Organization shall have the right to compel FINRA to alter the manner or means by which it conducts its regulatory efforts. Further, a Participating Organization shall not have the right to compel a rebate or reassessment of fees for services rendered, on the basis that the Participating Organization would have conducted regulatory efforts in a different manner than FINRA in its professional judgment chose to conduct its regulatory efforts.

b. *Record Keeping.* In anticipation of any audit that may be performed by the Exchange Committee under paragraph 5.a. above, [NYSE and] FINRA shall [each] keep accurate financial records and documentation relating to the Fees charged by [each, respectively,]*it* under this Agreement.

EXHIBIT C: REPORTS

[NYSE Regulation and] FINRA shall provide the following information in reports to the Exchange Committee, which information covers activity occurring under this Agreement:

1. *Alert Summary Statistics:* Total number of surveillance system alerts generated by quarter along with associated number of reviews and investigations. In addition, this paragraph shall also reflect the number of reviews and investigations originated from a source other than an alert. A separate table would be presented for *NYSE Listed Stock, NYSE* Amex Listed[, Nasdaq] *Stock, NYSE Arca* Listed *Stock, NASDAQ Listed Stock,* and CHX Solely Listed [equity]*Stock* trading activity.

2008	Surveillance alerts	Investigations
1st Quarter		
2nd Quarter		
3rd Quarter		
4th Quarter		
2008 Total		

2. *Aging of Open Matters:* Would reflect the aging for all currently open matters for the quarterly period being reported. A separate table would be presented for *NYSE Listed Stock, NYSE* Amex Listed[, Nasdaq] *Stock, NYSE Arca* Listed *Stock, NASDAQ Listed Stock,* and CHX Solely Listed [equity]*Stock* trading activity.

Example:

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

3. *Timeliness of Completed Matters:* Would reflect the total age of those matters that were completed or closed during the quarterly period being reported. [NYSE and] FINRA will provide total referrals to the SEC.

Example:

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

4. *Disposition of Closed Matters:* Would reflect the disposition of those matters that were completed or closed during the quarterly period being reported. A separate table would be presented for *NYSE Listed Stock, NYSE* Amex Listed[, Nasdaq] *Stock, NYSE Arca* Listed *Stock, NASDAQ Listed Stock,* and CHX Solely Listed [equity]*Stock* trading activity.

Example:

	Surveillance YTD	Investigations YTD
No Further Review		
Letter of Caution/Admonition/Fine		
Referred to Legal/Enforcement		
Referred to SEC/SRO		
Merged		
Other		
Total		

5. *Pending Reviews.* In addition to the above reports, the Chief Regulatory Officer (CRO) (or his or her designee) of any Participating Organization that is also a [l]Listing [m]Market (including CHX) may inquire about pending reviews involving stocks listed on that Participating Organization's market. [NYSE Regulation and] FINRA[, respectively,] will respond to such inquiries from a CRO; provided, however, that (a) the CRO must hold any information provided by [NYSE Regulation and] FINRA in confidence and (b) [NYSE Regulation and] FINRA will not be compelled to provide information in contradiction of any mandate, directive or order from the SEC, US Attorney's Office, the Office of any State Attorney General or court of competent jurisdiction.

* * * * *

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–566 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 4–566. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of BATS, BYX, CBOE, CHX, EDGA, EDGX, FINRA, NASDAQ OMX BX, NASDAQ OMX Phlx, NASDAQ, NSX, NYSE, NYSE Amex, and NYSE Arca. 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 4–566 and should be submitted on or before February 17, 2011.

V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act [15] and Rule 17d–2 [16] thereunder in that it is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules to FINRA. Accordingly, the proposed amendment to the Plan promotes efficiency by consolidating these regulatory functions in a single SRO.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The purpose of the amendment is to amend the Plan to reflect that FINRA has assumed responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets. The Commission believes that the amended Plan should become effective and be implemented without undue delay in order to conform the terms of the Plan to reflect that new arrangement. In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.[17] Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–566.

It is therefore ordered, pursuant to Section 17(d) of the Act,[18] that the Plan, as amended, is hereby approved and declared effective.

It is further ordered that the Participating Organizations are relieved of those regulatory responsibilities allocated to FINRA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1764 Filed 1–26–11; 8:45 am]

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[15] 15 U.S.C. 78q(d).

[16] 17 CFR 240.17d–2

[17] *See supra* note 11.

[18] 15 U.S.C. 78q(d).

[19] 17 CFR 200.30–3(a)(24).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63736; File No. SR–NYSE–2010–74]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Create a Bond Trading License for Member Organizations and Establish Bonds Liquidity Providers as a New Market Class on NYSE Under a Pilot Program

January 19, 2011.

I. Introduction

On November 23, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a twelve-month pilot program to create a bond trading license ("BTL") for member organizations that desire to trade only debt securities on the Exchange and establish a new class of NYSE market participants, Bonds Liquidity Providers ("BLPs"). The proposal was published for comment in the **Federal Register** on December 10, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

A. Bonds Trading License

The Exchange proposes to establish a new bonds-only trading license.[4] Currently, an approved member organization may obtain a trading license pursuant to Rule 300, which permits trading of all debt and equity securities listed on the Exchange. Under proposed Rule 87, any member organization that chooses to trade only bonds, or any new member organization who desires to trade only bonds, could apply for a BTL. A BTL would be available to any approved NYSE member organization. A BTL could not be transferred, assigned, sublicensed or leased, in whole or in part.[5]

B. Bond Liquidity Providers

The Exchange also proposes to create a new class of market participant, BLPs, which would function similarly to Supplemental Liquidity Providers ("SLPs") trading equity securities in the Exchange's New Market Model.[6] Currently, bond platform participants are charged a graduated fee for liquidity-taking transactions, with larger-size transactions charged at a lower rate.[7] Pursuant to proposed Rule 88, the Exchange would provide an additional incentive in the form of a rebate to BLPs for quoting and adding liquidity to the bond market via the BLP program.

Responsibilities of BLPs [8]

(1) Quoting Requirements

Under proposed Rule 88(a), a BLP would be required to maintain: (1) A bid at least seventy percent of the trading day for a bond; (2) an offer at least seventy percent of the trading day for a bond; and (3) a bid or offer at the Exchange's Best Bid ("BB") or Exchange's Best Offer ("BO") at least five percent of the trading day in each of its bonds in the aggregate. Proposed Rule 88(b) provides that a BLP that meets these quoting requirements would receive a liquidity provider rebate, to be set forth in the Exchange's Price List.[9] The Exchange has represented that it would monitor the balance between the quoting requirements and the liquidity provider rebate during the course of the pilot and may consider revising the incentive and quoting structure if, for example, more liquidity is brought to the NYSE bond marketplace.

(2) Qualifications

To qualify as a BLP under proposed Rule 88(c), a member organization would be required to: (1) Demonstrate an ability to meet the quoting requirements of a BLP; (2) have mnemonics that identify to the Exchange BLP trading activity in assigned BLP bonds; and (3) have adequate trading infrastructure and technology to support electronic trading.[10]

(3) Application Process

Under proposed Rule 88(d), to become a BLP, a member organization would be required to submit a BLP application form with supporting documentation to the Exchange. The Exchange would review the application and documentation and notify the applicant of its decision. In the event an applicant is disapproved or disqualified under proposed Rule 88(d)(4) or (i)(2) by the Exchange, the applicant may request an appeal as provided in proposed Rule 88(j), and/or reapply for BLP status three months after the month in which the applicant received disapproval or disqualification notice from the Exchange.

(4) Voluntary Withdrawal of BLP Status

A BLP may withdraw its status by giving notice to the Exchange. After the Exchange receives the notice of withdrawal from the BLP, the Exchange would reassign such bonds as soon as practicable, but no later than 30 days from the date the notice was received by the Exchange. Withdrawal would become effective when bonds assigned to the withdrawing BLP are reassigned to another BLP. If the reassignment of bonds takes longer than the 30-day period, the withdrawing BLP would have no further obligations and would not be responsible for any matters concerning its previously assigned BLP bonds.

(5) Calculation of Quoting Requirements

Beginning with its first month of operation as a BLP, the BLP must satisfy the 70% quoting requirement for each of its assigned BLP bonds. The Exchange would calculate whether a BLP met its 70% quoting requirement by determining the average percentage of time a BLP was at a bid (offer) in each of its BLP bonds during the regular trading day on a daily and monthly

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63444 (December 6, 2010), 75 FR 77024 (SR–NYSE–2010–74) ("Notice").

[4] NYSE intends to submit a separate filing to address the fees associated with the proposed bond trading license.

[5] The holder of the BTL could, however, with prior written consent of the Exchange, transfer a BTL to a qualified and approved member organization (i) that is an affiliate or (ii) that continues substantially the same business of such BTL holder without regard to the form of the transaction used to achieve such continuation, *e.g.,* merger, sale of substantially all assets, reincorporation, reorganization or the like.

[6] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing SLP Pilot); 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (establishing New Market Model Pilot); and 62814 (September 1, 2010), 75 FR 54671 (September 8, 2010) (SR–NYSE–2010–61) (extending the Pilots until January 31, 2011).

[7] *See* Securities Exchange Act Release Nos. 63593 (December 21, 2010), 75 FR 81701 (December 28, 2010) (SR–NYSE–2010–83) and 57176 (January 18, 2008), 73 FR 4929 (January 28, 2008) (SR–NYSE–2008–04). *See also* Notice, *supra* note 3.

[8] The following provides an overview of the Exchange's BLP proposal. For additional information, *see* Notice, *supra* note 3.

[9] NYSE has represented that it intends to submit a separate filing that would set the liquidity provider rebate at $0.05 per bond, with a $50 rebate cap per transaction.

[10] A member organization's off-Floor technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as a BLP. If a member organization were unable to support the electronic trading and reporting systems of the Exchange for BLP trading activity, it would not qualify as a BLP. The BLP must establish connectivity with relevant Exchange systems before being permitted to trade as a BLP.

basis,[11] using the calculation methodology set forth proposed Rule 88(f)(1).[12]

The 5% quoting requirement would take effect starting the third month of a BLP's operation.[13] The Exchange would determine whether a BLP had met its 5% quoting requirement by determining the average percentage of time a BLP was at the BB or BO in each of its assigned BLP bonds during the regular trading day on a daily and monthly basis, using the calculation methodology set forth proposed Rule 88(f)(2).[14]

(6) Matching of BLPs and Issuers

During the proposed pilot program, an issuer may be represented by only one BLP. Prior to the commencement of the pilot, the Exchange would match issuers with approved BLPs. The matching process for the largest issuers would be determined on a random basis, while the matching process for smaller issuers would be determined in favor of those BLPs willing to offer the broadest coverage to such issuers.

In the first round of matching, the Exchange would match BLPs to issuers that have at least one debt issue with a current outstanding principal of $500 million or greater. BLPs would be permitted to select the issuers that they want to represent from this group in an order determined by lottery. Each BLP would make one selection, and the process would continue until all BLPs exhausted their selections for this group of issuers.

In the second round of matching, the Exchange would match BLPs to issuers with one or more debt issues that each has a current outstanding principal of less than $500 million. Each BLP would submit a list of the issuers and bonds that it would be willing to represent. The BLP that is willing to represent the most bonds for a given issuer would be matched to that issuer. In event of a tie (*i.e.,* two or more issuers seeking to represent the same issuer and the same number of that issuer's bonds), the BLP with the highest lottery number from the first round would be matched with the issuer.

After the commencement of the program, matching would continue in a manner similar to the second round of matching prior to commencement of the program. On a monthly basis, BLPs would be permitted to apply for unrepresented issuers. The BLP willing to represent the most debt issuances of an issuer would be awarded status as a BLP for such issuer, with ties resolved by lottery.

A BLP must represent each debt issuance of an issuer that has an outstanding principal of $500 million or more. A BLP may represent any issuance below such level, but would not be required to do so. If a BLP is representing a debt issuance that was above $500 million but falls below such level, or has voluntarily been representing an issuance below the $500 million level where the outstanding principal amount has since been reduced, the BLP may cease representing such issue by notifying the Exchange in writing by the 15th day of the month, in which case the BLP may cease acting as such on the first day of the following month.

The Exchange believes that the matching process would give BLPs the opportunity to select the issuers that they want to represent and thereby take into account the BLP's expertise in particular issuers and sectors. In addition, NYSE believes this matching process would be fair to approved BLPs and beneficial to issuers and would result in the broadest coverage of issuers and sectors upon commencement of the pilot.

(7) Failure To Meet Quoting Requirements

After the initial two-month grace period, if, in any given calendar month, a BLP fails to meet any of the quoting requirements set forth in proposed Rule 88(a), the BLP would not receive the liquidity provider rebate for the affected bond for that month. If a BLP's failure to meet the quoting requirements continues for three consecutive calendar months in any assigned BLP bond, the Exchange could, in its discretion, take one or more of the following actions: (i) Revoke the assignment of all of the affected issuer's bonds from the BLP; (ii) revoke the assignment of an additional unaffected issuer from the BLP; or (iii) disqualify a member organization from its status as a BLP.

The Exchange, in its sole discretion, would determine if and when a member organization is disqualified from its status as a BLP. One calendar month prior to any such determination, the Exchange would notify a BLP of its impending disqualification in writing. When disqualification determinations are made, the Exchange would provide a disqualification notice to the member organization.

If a member organization were denied approval pursuant to paragraph (d)(2) of the proposed rule or disqualified from its status as a BLP pursuant to paragraph (i)(1)(C) of the proposed rule, such member organization could re-apply for BLP status three calendar months after the month in which the member organization received its disapproval or disqualification notice.

(8) Appeal of Disapproval or Disqualification

A member organization may dispute the Exchange's decision to disapprove or disqualify it by requesting, within five business days of receiving notice of the decision, review by the Bond Liquidity Provider Panel ("BLP Panel") [15] (the disputing member organization, an "appellant").[16] In the event a member organization is disqualified from its status as a BLP pursuant to proposed Rule 88(i)(2), the Exchange will not reassign the appellant's bonds to a different BLP until the BLP Panel has informed the appellant of its ruling. The BLP Panel will review the facts and render a decision within the time frame prescribed by the Exchange, and all determinations by the BLP Panel will constitute final action by the Exchange.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposed rule change to establish a pilot program, expiring twelve months from the date of this approval order, to create a BTL for member organizations that desire to trade only debt securities on the Exchange and to establish BLPs as a new class of NYSE market participants, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which, among other things, requires that the rules of a national securities exchange be

[11] Only displayed orders entered throughout the trading day would be used when calculating whether a BLP is in compliance with its 70% average quoting requirement. In addition, for purposes of the 70% quoting requirement, a BLP would be considered to be quoting an assigned bond if it had a displayed bid (offer) for at least 10 displayed bonds at a single price level.

[12] *See* Notice, *supra* note 3, 75 FR at 77025–26.

[13] Only displayed orders at the BB and BO throughout the trading day would be used when calculating whether a BLP is in compliance with its 5% average quoting requirement.

[14] *See* Notice, *supra* note 3, 75 FR at 77026.

[15] The BLP Panel will consist of the NYSE's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution.

[16] *See* proposed Rule 88(j).

[17] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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.

Specifically, the Commission notes that the new BTL, pursuant to a pilot program, may allow member organizations to become authorized to trade on the Exchange pursuant to a license more specifically tailored to a member organization's trading. Therefore, this aspect of the proposal may increase efficiency, without compromising regulatory oversight, both for member applicants as well as the Exchange. In addition, the Commission notes that NYSE has represented it will submit a separate fee filing to address the BTL, and the Commission expects that the costs for the BTL would be less than the general trading license on the Exchange. Thus, the BTL may also decrease costs for organizations choosing to trade just bonds on NYSE.

The Commission also notes that BLPs would be required to have adequate trading infrastructure and technology to support trading in the bonds and meet quoting requirements and be approved by NYSE, and upon bringing liquidity to NYSE's bond market, BLPs would receive a rebate based on an incentive and quoting structure. BLPs that fail to meet the quoting requirements set forth in the proposed rule would no longer be eligible for the rebate and may, in the Exchange's discretion, have one or more issues revoked or be disqualified as a BLP. The Commission believes it is consistent with the Act for the Exchange to provide an incentive to member organizations bringing liquidity to the bond marketplace, and to remove the incentive when the BLP does not meet its obligations. Importantly, the Commission notes that the proposed rules relating to BLPs would be on a pilot basis. The Commission believes that, while the framework proposed by the Exchange as part of this proposed rule change may be suitable for the Exchange's current level of trading activity on its bond platform, this framework may not be suitable in the future should the characteristics of the bond platform, including but not limited to trading activity, change. Thus, the Commission believes that it is appropriate that the proposed rules be approved on a pilot basis, such that the Exchange and Commission may review the suitability of these rules again. The Commission notes that the Exchange has represented that it would monitor the quoting and rebate structure and may consider modifications.

The Commission understands that one BLP would be matched to each issuer. BLPs would be able to choose issuers having at least one issue with an outstanding principal of $500 million or greater in an order determined by lottery. Issuers not having at least one issue with an outstanding principal of $500 million or greater would be matched to BLPs willing to represent the most bonds for that given issuer, and any tie with respect to BLPs wishing to represent these issuers would be resolved by allowing BLPs to choose in the order determined by lottery. The Commission believes that this is an objective way to commence the pilot program for all parties, as it is intended by the Exchange to result in broad coverage of issuers; however, the Commission believes the results of the issuer selection and assignment process should be evaluated by the Exchange, and the findings shared with the Commission, prior to any proposal to modify or permanently establish the rules relating to the BLP selection process.

Finally, the Commission understands that NYSE would allow BLPs and BLP applicants the opportunity to appeal disapproval or disqualification decisions, as applicable, to a BLP panel, and that NYSE would provide a disqualified BLP with a month's prior written notice of the disqualification. This should provide transparency to the process and an additional opportunity for BLPs and BLP applicants to be heard.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSE–2010–74), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1709 Filed 1–26–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63746; File No. SR–NYSEAmex–2011–05]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Standards for Market Maker Electronic Quotes That Are Present During an Opening Auction

January 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 14, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 adopt standards for Market Maker electronic quotes that are present during an opening auction. 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 filing is to adopt rules governing quote widths for Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Maker electronic quotes that are present during an opening auction, based on a provision of the Rules of NASDAQ OMX PHLX ("Phlx"), by revising the Obligations of Market Makers in Rule 925NY.

Currently, the only restriction on quote widths for NYSE Amex Market Maker electronic quotes is that they be no more than $5 wide. The Exchange has found that the absence of more narrow quotes during an opening auction has prevented series from opening promptly and is unnecessarily delaying the execution of orders.

The Exchange proposes to adopt a provision based on Phlx Rule 1014(c)(i)(A)(2)(a). The Phlx rule sets the maximum bid/ask differential for electronic quotes at $5, but also requires electronic quotes that are submitted during an opening rotation to have a bid/ask differential that is consistent with the quote width requirements for open outcry trading. NYSE Amex intends to modify the requirements of NYSE Amex Rule 925NY(b)[3] to also apply them to quotes submitted for possible participation in a Trading Auction as defined in Rule 952NY.

Specifically, the Exchange proposes that an electronic quote that is submitted for possible participation in an opening auction must have a bid/ask differential of no more than:

(A) .25 between the bid and the offer for each option contract for which the bid is less than $2,

(B) No more than .40 where the bid is $2 or more but does not exceed $5,

(C) No more than .50 where the bid is more than $5 but does not exceed $10,

(D) No more than .80 where the bid is more than $10 but does not exceed $20, and

(E) No more than $1 when the last bid is $20.10 or more.

These differentials are common in the options industry,[4] and are often referred to as "legal width".

As is currently the case, different bid/ask differentials would be permitted to be established, but only with the approval of at least two Trading Officials.

The Exchange believes that setting a narrower differential for opening auction quotes will expedite the opening of all options series on the Exchange promptly after the opening of the underlying security.

NYSE Arca [sic] will implement this rule change upon notification to OTP Holders through the issuance of a Regulatory Bulletin.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by expediting the opening auction process and the execution of Customer orders submitted for the opening.

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

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[7] and Rule 19b–4(f)(6) thereunder.[8]

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–NYSEAmex–2011–05 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–NYSEAmex–2011–05. 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

[3] While our proposed rule text is not exactly identical to Phlx Rule 1014(c)(i)(A)(2)(a), the intent and impact of the rule is the same—namely, to provide for narrower quotes during an opening auction, which in turn helps facilitate a prompt and efficient opening. As discussed below, we believe that this proposed rule change qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4. 17 CFR 240.19b–4(f)(6).

[4] *See, e.g.,* Boston Options Exchange Rule Chapter VI Sec.5(a)(vii), International Securities Exchange Rule 803(b)(4), NASDAQ OMX PHLX Rule 1014(c)(i)(A)(1)(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

Exchange.[9] 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–NYSEAmex–2011–05 and should be submitted on or before February 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1725 Filed 1–26–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63753; File No. SR–NYSEArca–2010–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Teucrium Natural Gas Fund

January 21, 2011.

I. Introduction

On December 3, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Teucrium Natural Gas Fund under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on December 15, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade shares ("Shares") of the Teucrium Natural Gas Fund ("Fund") pursuant to NYSE Arca Equities Rule 8.200. NYSE Arca Equities Rule 8.200, Commentary .02, permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[4]

The Shares represent beneficial ownership interests in the Fund, which is a commodity pool that is a series of the Teucrium Commodity Trust ("Trust"), a Delaware statutory trust.[5] The Fund is managed and controlled by Teucrium Trading, LLC ("Sponsor"). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association.

The investment objective of the Fund is to have the daily changes in percentage terms of the Shares' net asset value ("NAV") reflect the daily changes in percentage terms of a weighted average of the following: the nearest to spot month March, April, October and November Henry Hub Natural Gas Futures Contracts ("Natural Gas Futures Contracts") traded on the NYMEX, weighted 25% equally in each contract month, less the Fund's expenses.[6] The Sponsor employs a "neutral" investment strategy intended to track the changes in the Gas Benchmark regardless of whether the Gas Benchmark goes up or down.

The Fund seeks to achieve its investment objective by investing under normal market conditions in Gas Benchmark Component Futures Contracts or, in certain circumstances, in other Natural Gas Futures Contracts traded on the New York Mercantile Exchange ("NYMEX"), Intercontinental Exchange ("ICE"), and other foreign exchanges. In addition, and to a limited extent, the Fund will invest in natural gas-based swap agreements that are cleared through the ICE or its affiliated provider of clearing services ("Cleared Natural Gas Swaps") to the extent permitted and appropriate in light of the liquidity in the Cleared Natural Gas Swap market. Once position limits in Natural Gas Futures Contracts are applicable, the Fund may also invest first in Cleared Natural Gas Swaps to the extent permitted by the position limits applicable to Cleared Natural Gas Swaps and appropriate in light of the liquidity in the Cleared Natural Gas Swaps market, and then in contracts and instruments such as cash-settled options on Natural Gas Futures Contracts and forward contracts, swaps other than Cleared Natural Gas Swaps, and other over-the-counter transactions that are based on the price of natural gas and Natural Gas Futures Contracts (collectively, "Other Natural Gas Interests" and together with Natural Gas Futures Contracts and Cleared Natural Gas Swaps, "Natural Gas Interests").[7]

The Exchange represents that the Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[8] the Trust will rely on the exception contained in Rule 10A–3(c)(7).[9] A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.

Additional details regarding the trading policies of the Fund, creations and redemptions of the Shares, Natural Gas Interests and other aspects of the natural gas and Natural Gas Interest markets, investment risks, Benchmark performance, NAV calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[10]

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change to list and trade the Shares of the Fund is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[12] which requires, among

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63493 (December 9, 2010), 75 FR 78290 ("Notice").

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] *See* Amendment No. 1 to registration statement on Form S–1 for Teucrium Commodity Trust, dated September 7, 2010 (File No. 333–167593) relating to the Teucrium Natural Gas Fund ("Registration Statement").

[6] This weighted average of the four referenced Natural Gas Futures Contracts is referred to herein as the "Gas Benchmark," and the four Natural Gas Futures Contracts that at any given time make up the Gas Benchmark are referred to herein as the "Gas Benchmark Component Futures Contracts."

[7] The Fund will invest in Natural Gas Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

[8] 17 CFR 240.10A–3.

[9] 17 CFR 240.10A–3(c)(7).

[10] *See supra* notes 3 and 5.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission finds that the proposal to list and trade the Shares on the Exchange is also consistent with Section 11A(a)(1)(C)(iii) of the Act,[13] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"), and the Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. Eastern Time ("E.T."). In addition, the Indicative Trust Value ("ITV") will be disseminated on a per-Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.[14] The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price, and market value of Financial Instruments [15] and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. The closing price and settlement prices of the Natural Gas Futures Contracts are readily available from NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters, and the spot price of natural gas also is available on a 24-hour basis from major market data vendors. The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time, and the Web site for the Fund (*http://www.teucriumnaturalgasfund.com*) and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the ITV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the ITV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, the Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers (as defined in the Registration Statement) so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site. Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders [16] acting as registered Market Makers [17] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance 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.

(4) With respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (c) 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; (d) how information regarding the ITV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.

(7) With respect to the application of Rule 10A–3 under the Act, the Trust will rely on the exception contained in Rule 10A–3(c)(7).[18]

This approval order is based on the Exchange's representations.[19]

[13] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[14] The normal trading hours for Natural Gas Futures Contracts on NYMEX are 9 a.m. to 2:30 p.m. E.T. The ITV will not be updated, and, therefore, a static ITV will be disseminated, between the close of trading on NYMEX of Natural Gas Futures Contracts and the close of the NYSE Arca Core Trading Session. The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and the NYMEX and ICE when the Shares are traded on NYSE Arca after normal trading hours of Natural Gas Futures Contracts on NYMEX.

[15] *See supra* note 4.

[16] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[17] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

[18] *See supra* notes 8 and 9 and accompanying text.

[19] The Commission notes that it does not regulate the market for the futures in which the Fund plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures on commodities. These limits may be directly set by the CFTC, or by the markets on which the futures are traded. The Commission has no role in

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSEArca–2010–110) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1728 Filed 1–26–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63747; File No. SR–NYSEArca–2011–03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Standards for Market Maker Electronic Quotes That Are Present During an Opening Auction

January 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 13, 2011, 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 adopt standards for Market Maker electronic quotes that are present during an opening auction. 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 filing is to adopt rules governing quote widths for Market Maker electronic quotes that are present during an opening auction, based on a provision of the Rules of NASDAQ OMX PHLX ("Phlx"), by revising the Obligations of Market Makers—OX in Rule 6.37A.

Currently, the only restriction on quote widths for NYSE Arca Market Maker electronic quotes is that they be no more than $5 wide. The Exchange has found that the absence of more narrow quotes during an opening auction has prevented series from opening promptly and is unnecessarily delaying the execution of orders.

The Exchange proposes to adopt a provision based on Phlx Rule 1014(c)(i)(A)(2)(a). The Phlx rule sets the maximum bid/ask differential for electronic quotes at $5, but also requires electronic quotes that are submitted during an opening rotation to have a bid/ask differential that is consistent with the quote width requirements for open outcry trading. NYSE Arca intends to modify the requirements of NYSE Arca Rule 6.37A(b) to apply the open outcry quote widths in NYSE Arca Rule 6.37(b)(1) to electronic quotes submitted for possible participation in a Trading Auction as defined in Rule 6.64.[3]

Specifically, the Exchange proposes that an electronic quote that is submitted for possible participation in an opening auction must have a bid/ask differential of no more than:

(A) .25 between the bid and the offer for each option contract for which the bid is less than $2,

(B) no more than .40 where the bid is $2 or more but does not exceed $5,

(C) no more than .50 where the bid is more than $5 but does not exceed $10,

(D) no more than .80 where the bid is more than $10 but does not exceed $20, and

(E) no more than $1 when the last bid is $20.10 or more.

These differentials are common in the options industry,[4] and are often referred to as "legal width".

As is currently the case, different bid/ask differentials would be permitted to be established, but only with the approval of at least two Trading Officials.

The Exchange believes that setting a narrower differential for opening auction quotes will expedite the opening of all options series on the Exchange promptly after the opening of the underlying security.

NYSE Arca will implement this rule change upon notification to OTP Holders through the issuance of a Regulatory Bulletin.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [5] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by expediting the opening auction process and the execution of Customer orders submitted for the opening.

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.

establishing position limits on futures in commodities, even though such limits could impact a commodity-based exchange-traded product that is under the jurisdiction of the Commission.

[20] 15 U.S.C. 78f(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] While our proposed rule text is not exactly identical to Phlx Rule 1014(c)(i)(A)(2)(a), the intent and impact of the rule is the same—namely, to provide for narrower quotes during an opening auction, which in turn helps facilitate a prompt and efficient opening. As discussed below, we believe that this proposed rule change qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4. 17 CFR 240.19b–4(f)(6).

[4] *See e.g.,* Boston Options Exchange Rule Chapter VI Sec. 5(a)(vii), International Securities Exchange Rule 803(b)(4), NASDAQ OMX PHLX Rule 1014(c)(i)(A)(1)(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

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–2011–03 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–2011–03. 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 20549–1090, 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.[9] 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–2011–03 and should be submitted on or before February 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1726 Filed 1–26–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63751; File No. SR–FINRA–2011–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Asset-Backed Securities

January 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to provide an alternative method of calculating the Trading Activity Fee ("TAF") for transactions in Asset-Backed Securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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

The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, which include examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[3] In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRAC-Eligible Securities), over-the-counter equity securities, security futures, TRAC-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to MSRB reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.[4] The current TAF rates are $0.000075 per share for each sale of a covered equity security, with a maximum charge of $3.75 per trade; $0.002 per contract for each sale of an option; $0.04 per contract for each round turn transaction of a security future; and $0.00075 per bond for each sale of a covered TRAC-Eligible Security and/or municipal security, with a maximum charge of $0.75 per trade. In addition, if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no TAF is assessed.

Currently, when reporting the size of a corporate bond transaction to the Trade Reporting and Compliance Engine ("TRACE"), a member reports the number of bonds (*e.g.,* 10 bonds), and the TRACE System, which is programmed to reflect that one bond equals $1,000 par value, calculates the total dollar volume of the transaction (*e.g.,* 10 bonds x $1,000 = $10,000).[5] Because of this reporting structure, the TAF is assessed on a per-bond basis, but the number of bonds is a proxy for the size of the total dollar volume of a transaction in $1,000 increments.

Earlier this year, the SEC approved amendments to the TRACE reporting requirements to include transactions in Asset-Backed Securities.[6] Under the amendments, Asset-Backed Securities will be TRAC-Eligible Securities, and transactions in Asset-Backed Securities will generally be reportable to TRACE and, thus, subject to the TAF. The effective date of the amendments is May 16, 2011.[7]

Although some Asset-Backed Securities are structured like conventional corporate bonds (*i.e.,* generally, one bond has a par (or principal) value of $1,000), many are structured differently. For example, many Asset-Backed Securities are based on financial assets that amortize, and the principal (or face) value declines over time. Accordingly, transactions in Asset-Backed Securities will not be reported to TRACE on a "per-bond" basis like conventional corporate bonds, but rather will be reported based on the original principal (or face) value of the underlying security or the Remaining Principal Balance.[8]

FINRA is proposing to conform the TAF rate for sales of Asset-Backed Securities to make it consistent with how such transactions are reported to TRACE rather than use the existing per-bond rate. Consequently, FINRA is proposing to base the TAF for sales of Asset-Backed Securities on the size of the transaction as reported to TRACE (*i.e.,* par value, or, where par value is not used to determine the size of the transaction, the lesser of original face value or Remaining Principal Balance) at a rate of $0.00000075 times the size of the transaction as reported to TRACE, with a maximum charge of $0.75 per trade. Because, under the per-bond method of calculation, one bond represents $1,000 in par value, the TAF rate across all Reportable TRACE Transactions subject to the TAF will be the same, regardless of whether the transaction is in corporate bonds or Asset-Backed Securities.

In addition to the amendment to the TAF rate, FINRA is proposing technical changes to capitalize certain terms in the TAF rule to identify terms that are defined elsewhere in the FINRA Rulebook (*e.g.,* TRAC-Eligible Security) and to correct one rule cross-reference.

The effective date of the proposed rule change will be the date the proposed rule changes in SR–FINRA–2009–065 become effective, which is currently anticipated to be May 16, 2011.[9]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[10] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change will clarify the application of the TAF to sales of Asset-Backed Securities and will ensure these transactions are treated in the same way as transactions reported to TRACE in other types of fixed income securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor 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 self-regulatory organization consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment.

[4] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[5] *See* FINRA Rule 6730(c)(2), (d)(2).

[6] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). *See also Regulatory Notice* 10–23 (April 2010).

[7] *See Regulatory Notice* 10–55 (October 2010). *See also* Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010).

[8] FINRA Rule 6710(aa) defines "Remaining Principal Balance" for an Asset-Backed Security backed by a pool of mortgages or other assets that are self-amortizing, as "the total unpaid principal balance of all such mortgages, or the equivalent remaining value of such self-amortizing assets held in the asset pool, at a specific time, such as the Time of Execution." *See* SR–FINRA–2009–065.

[9] *See Regulatory Notice* 10–55 (October 2010). *See also* Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010); Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010); *Regulatory Notice* 10–23 (April 2010).

[10] 15 U.S.C. 78*o*–3(b)(5).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2011–004 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–004. 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2011–004 and should be submitted on or before February 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1727 Filed 1–26–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63737; File No. SR–NYSEArca–2010–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of the AdvisorShares Active Bear ETF

January 19, 2011.

I. Introduction

On November 23, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the AdvisorShares Active Bear ETF (the "Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 13, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by AdvisorShares Trust ("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.[4] The investment advisor to the Fund is AdvisorShares Investments, LLC (the "Advisor"). Ranger Alternative Management, L.P. is the sub-advisor ("Sub-Advisor") to the Fund and the portfolio manager. Foreside Fund Services LLC is the distributor for the Fund. The Bank of New York Mellon Corporation is the administrator, custodian, transfer agent and fund accounting agent for the Fund.

The Fund's investment objective is to seek capital appreciation through short sales of domestically-traded equity securities. The Sub-Advisor seeks to achieve that objective by short selling a portfolio of liquid mid- and large-cap U.S. exchange-traded equity securities, exchange-traded funds ("ETFs") registered pursuant to the 1940 Act and exchange-traded products ("ETPs"), including exchange-traded notes ("ETNs").[5] The Fund generally targets composition of 20–50 equity short positions, with an average individual position size generally ranging between 2–7% of the aggregate portfolio exposure. ETPs may be used to gain exposure in instances when the Sub-Advisor has a more bearish posture with respect to the broad market and will typically range between 10–15% of the Fund's portfolio. ETFs registered pursuant to the 1940 Act or other exchange-traded products not registered pursuant to the 1940 Act will be utilized to manage exposure to broad indexes or certain sectors. The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, for extended periods if desired, in high-quality short-term debt securities and money market instruments, depending on the Sub-Advisor's assessment of market conditions.

The Exchange represents that the Shares will be subject to NYSE Arca Equities Rule 8.600, which includes the initial and continued listing criteria applicable to Managed Fund Shares,[6] and will comply with Rule 10A–3 under the Act,[7] as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63447 (December 7, 2010), 75 FR 77681 ("Notice").

[4] The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On September 22, 2010, the Trust filed with the Commission Post-Effective Amendment No. 12 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (the "Registration Statement"). The Trust has also filed an Amended Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13677 dated May 28, 2010). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[5] The Fund may sell short only equity securities traded in the U.S. on registered exchanges. The Fund will not purchase or borrow illiquid securities or securities registered pursuant to Rule 144A under the Securities Act of 1933.

[6] The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. *See* Notice, *supra* note 3.

[7] 17 CFR 240.10A–3.

taxes is included in the Registration Statement and in the Notice.[8]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be 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 Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[12] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2)[13] that will form the basis for the Fund's calculation of NAV at the end of the business day.[14] The Web site for the Fund (*http://www.advisorshares.com*) will contain the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Portfolio Indicative Value ("PIV"), 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 PIV will be based upon the current value for the components of the Disclosed Portfolio, and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. 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.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[15] If the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.[16] In addition, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the PIV occurs; if the interruption to the dissemination of the PIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[17]

The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer. In the event the Adviser or the Sub-Adviser become affiliated with a broker-dealer, or any new adviser or sub-adviser 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 the portfolio.[18] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[19]

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance 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.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e)

[8] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[9] 15 U.S.C. 78f.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[13] "Disclosed Portfolio" is defined as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. The Disclosed Portfolio will disclose the following information: Ticker symbol (if applicable), name or description of security or investment, number of shares or dollar value of investments held in the portfolio, and percentage weighting of the security or investment in the portfolio.

[14] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[15] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[16] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[17] *See id.* Trading in the Shares may also 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, for example: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[18] *See also* Commentary .06 to NYSE Arca Equities Rule 8.600.

[19] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.

(6) The Fund may sell short only equity securities traded in the U.S. on registered exchanges.

(7) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [20] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2010–107), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1710 Filed 1–26–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63745; File No. SR–NASDAQ–2011–010]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Link Market Data Fees and Transaction Execution Fees

January 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "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

NASDAQ proposes to reduce market data fees and transaction execution fees for retail investors. NASDAQ, like the Commission, "is particularly focused on the interests of long-term investors." [3] Retail investors' orders are often executed away from well-regulated public exchanges that offer pre-trade transparency. The Commission has noted that absent extraordinary conditions such as those occurring on May 6, 2010, retail orders are generally executed by internalizers away from exchanges and without pre-trade transparency, exposure or order interaction.[4] In NASDAQ's view, the likelihood that retail investors' orders are executed away from exchanges is impacted by disparities in regulation between lit markets such as those operated by exchanges [5] on one hand and broker systems or dark markets operated as Alternative Trading Systems on the other. One such disparity provides dark markets great flexibility to price differentiate between subscribers, while denying exchanges the same flexibility to differentiate between members. Furthermore, although exchanges and dark markets compete for the same order flow and for the same transactions, exchanges must file proposed fee schedules and changes, while other markets have no such burden. The result is that proposed rule changes that impact NASDAQ's ability to compete for order flow, transactions, and market data, such as the current proposal, are subject to significant scrutiny and potential delay while similar conduct by other markets is subject to no public filing requirement, no regulatory delay, and for dark markets is opaque to investors and competitors alike.

This filing is an attempt by NASDAQ to compete to attract retail investors' orders and to improve the experience of retail investors on NASDAQ's public market. NASDAQ is reducing fees for members that serve retail investors. Specifically, NASDAQ is reducing the costs of executing trades and of providing "depth of book" data products for NASDAQ member firms that service "non-professional" users with which the firm has a brokerage relationship. The more NASDAQ data a firm provides to retail investors, and the more that firm trades on NASDAQ, the lower its fees will be. This is an optional pricing proposal designed to benefit non-professional investors by providing an incentive for them to trade in the well-regulated, publicly-displayed market that NASDAQ operates.

NASDAQ will implement the proposed change on January 3, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, 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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below. NASDAQ 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

This filing reduces prices for NASDAQ market data and for trading on NASDAQ. The proposed price reduction is targeted at retaining the business of members that represent retail investors and that redistribute market data to them in a non-professional capacity. NASDAQ believes that this proposal thereby promotes NASDAQ's and the Commission's goal of better serving long-term, retail investors and restoring confidence in public capital markets. The participation of these investors in NASDAQ's market benefits NASDAQ, its listed companies, its market quality, and the quality of its data products. The proposal is also a competitive response to other trading venues that have used

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[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release 61358, Concept Release on Equity Market Structure (Jan. 14, 2010), at p. 33.

[4] *See* Findings Regarding The Market Events Of May 6, 2010, Report Of The Staffs Of The CFTC And SEC To The Joint Advisory Committee On Emerging Regulatory Issues, September 30, 2010, at p. 56. It is often contended that dark markets serve the interests of large investors whose order sizes give rise to the potential for adverse market movements. Such potential does not exist in the case of smaller retail orders.

[5] Alternative Trading Systems that meet the five percent display threshold under Regulation ATS also qualify as lit markets with higher regulatory requirements. NASDAQ is not aware that any ATS is operating under these conditions today.

price discounts to entice firms to shift order flow and data consumption, and that may continue to do so in the future. In short, NASDAQ is attempting to compete on price for the business of customers that are highly valued to NASDAQ and important to the health of U.S. capital markets.

Description of the Pricing Proposal

NASDAQ is proposing a discount for its depth-of-book data products and an enhanced liquidity provider rebate based upon the extent to which a NASDAQ member both consumes NASDAQ market data and also contributes to the quality of NASDAQ data through liquidity provision. This program focuses on non-professional use of "NASDAQ Depth Data Product Fees" which are the non-professional fees for NQDS (Rule 7017), and TotalView and OpenView (Rule 7023), including fees for usage (Rule 7026) and enterprise license fees. It also focuses on average daily liquidity provision to the NASDAQ Market Center as that activity is measured today in NASDAQ Rule 7018. This pricing is completely optional; no member is required to participate or excluded from participating.

The market data discount provided through the proposal is for fees incurred by NASDAQ members in providing NASDAQ depth-of-book data to non-professional users. A member incurs non-professional fees when it offers depth-of-book data to natural persons that are not acting in a capacity that subjects them to financial industry regulation (*e.g.,* retail customers).[6] NASDAQ seeks to encourage wide distribution of market data to non-professional users, because it believes that this will encourage more order flow from investors whose trading volumes are elastic and therefore influenced by factors such as the availability of data. NASDAQ also expects that some of the benefit of the fee reductions offered through the proposal will be passed on to brokerage customers. For this reason, NASDAQ already provides a discounted rate for non-professional data, whether it is sold directly to a non-professional user or distributed to the user through a broker. NASDAQ believes that non-professional users that are able to make use of depth data also have a degree of knowledge about market structure that would cause them to favor limit orders, rather than market orders, when buying and selling. Thus, through the proposal, NASDAQ hopes to encourage a "virtuous circle" in which firms route more liquidity-providing orders to NASDAQ and consume and distribute more data in order to receive the discount, with increased data distribution in turn encouraging still more liquidity provision. NASDAQ also hopes to encourage additional firms to provide depth-of-book to their customers.

The program has three tiers, each with two requirements, one based on liquidity provision and the other based on data consumption. A member will qualify as a "Tier 1 Firm" for purposes of the discount during a particular month if it (i) has an average daily volume of 12 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees (as defined above) during the month of $150,000 or more (prior to applying the discount provided by this proposal). A member will qualify as a "Tier 2 Firm" for purposes of the discount during a particular month if it (i) has an average daily volume of 35 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of $300,000 or more (prior to applying the discount provided by this proposal). A member will qualify as a "Tier 3 Firm" for purposes of the discount during a particular month if it (i) has an average daily volume of 65 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of $500,000 or more (prior to applying the discount provided by this proposal).

Firms that qualify as Tier 1, Tier 2, or Tier 3 Firms will receive discounted market NASDAQ Depth Data Product Fees and, in the case of Tier 1 Firms, increased liquidity provider credits. With respect to market data fees, Tier 1 Firms will receive a 15% discount on non-professional fees for NASDAQ Depth Data Products charged to them. Tier 2 Firms will receive a 35% discount on non-professional fees for NASDAQ Depth Data Products charged to them. Tier 3 Firms will receive a 50% discount on non-professional fees charged to them.[7] The discounted NASDAQ Depth Data Product Fees are tailored to benefit firms that provide a high quantity of data to non-professional retail investors and that also contribute significantly to the quality of NASDAQ data.

With respect to liquidity provider credits, Tier 1 Firms will qualify for a credit of $0.0028 per share of displayed liquidity provided and a $0.0015 per share of non-displayed liquidity. These rates are higher than the $0.0020 and $0.0010 per share of displayed and non-displayed liquidity provider credit available to firms that provide the same 12 million shares of liquidity per day without also consuming NASDAQ Depth Data Products sufficient to qualify for Tier 1 as defined here.[8] These credits are not incrementally higher than the credit currently available to firms providing 35 and 65 million shares of liquidity daily. In other words, the benefit available to Tier 2 and Tier 3 Firms under this program is limited to the discount for NASDAQ Depth Data Products described above.

The proposal is designed to recognize the benefits to NASDAQ, its listed companies, its market quality, and the quality of its proprietary data products that are provided by member firms that both post retail liquidity on NASDAQ and redistribute data to their customers. The proposal is also a direct competitive response to other trading venues that have used price discounts to entice firms to shift order flow and data consumption, and that may continue to do so in the future. Firms that are eligible for the discount are key contributors to market quality, by providing liquidity to support rapid execution of incoming orders with minimal price impact. These firms are able to shift their business immediately to competing exchanges, which requires NASDAQ to offer competitive responses to keep the business of these valued customers. NASDAQ currently recognizes the value of liquidity provision by offering liquidity provider credits that rise with the volume of

[6] NASDAQ Rule 7017(c) defines a non-professional as a natural person who is neither:

(1) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any State securities agency, any securities exchange or association, or any commodities or futures contract market or association;

(2) Engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(3) Employed by a bank or other organization exempt from registration under Federal or State securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[7] Since the eligibility of a member for the discount is determined on a month-by-month basis, data fees that are paid on an annual basis, such as the annual administrative fee for market data distributors under Rule 7019(a), are not covered by the definition of NASDAQ Depth Data Product Fees, and are therefore not counted in determining a firm's status as a Tier 1, Tier 2 or Tier 3 Firm.

[8] Tier 2 and Tier 3 Firms will receive the current liquidity provider credit of $0.00295 per share of displayed liquidity and $0.00015 per share of non-displayed liquidity. There is no enhancement to these liquidity provider credits at this time.

liquidity provided. For companies listed on NASDAQ, liquidity provision dampens volatility by allowing higher volumes to trade at a consistent price.

Single Platform, Joint Products

NASDAQ is offering a joint discount on market information and executions because, as described in greater detail in the attached Statement of Ordover and Bamberger (Exhibit 3), The NASDAQ Market Center is a single trading platform that unavoidably produces joint products: execution services and market data. Every execution of a trade automatically produces market information about that trade including the price and quantity traded. Every execution requires posted and taking orders, which in turn produce market data in the form of quotations, including top-of-book and depth-of-book quotations. Market information and executions are inextricably linked; each is both an input and a byproduct of the other and neither can exist without the other.

The operation of The NASDAQ Market Center and the production of joint products (executions and market information) require NASDAQ to incur joint costs. NASDAQ's costs to produce market information and executions are inseparable in that most of them are not uniquely incurred on behalf of either of the services provided by the exchange. To operate its trading platform, NASDAQ must incur high fixed costs before accepting a single order, executing a single trade, or producing a single element of market information. Each year, NASDAQ spends millions of dollars on market infrastructure such as servers, processors, line handlers, software, and personnel; data intake, processing and dissemination equipment and networking hardware and software; and regulatory and surveillance systems of both a manual and automated nature. NASDAQ incurs these high costs to operate the platform and to produce both executions and market information. In other words, without these costs, neither product is produced, but with them, both products are unavoidably produced.[9]

NASDAQ recaptures the cost of operating its platform through the sale of both executions and market information. The total return that NASDAQ or any trading platform earns reflects the revenues it receives from the sale of these joint products and other services, net of the joint and other costs (*i.e.,* those limited costs that can be directly attributed to one of the relevant products) it incurs. Different platforms choose different pricing strategies and ways of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.[10] These strategies can vary over time in response to changing market and regulatory factors.[11]

The Commission has acknowledged many times that trading platforms compete fiercely for executions. Platforms also compete for the sale of market data. For example, in June 2008, NASDAQ launched two proprietary "Last Sale" products. In each case, the terms included subscription rates and an "enterprise cap" rate designed for Web portals. The enterprise cap rates for the two products were $100,000 per month and $50,000 per month for the two products (*i.e.,* a total of $150,000 per month for customers who purchased both products). The majority of NASDAQ's sales were at the cap level. In early 2009, we understand that BATS offered an alternative product (BATS PITCH data) as a zero-cost alternative to the NASDAQ Last Sale products.[12] Also in early 2009, NYSE Arca announced the launch of a competitive product with an enterprise price of $30,000 per month. In response, NASDAQ combined its two Last Sale products into one in April 2009, and reduced the enterprise cap to $50,000 per month (*i.e.,* a reduction of $100,000 per month).

Given the joint nature of these products and the competitive markets in which they are offered, a bundled discount that is linked to total spending across the joint products is economically sensible for a single platform producing joint products. Bundling recognizes the value of liquidity provision and data distribution in creating the conditions that further encourage the creation of the trading platform's products. It also recognizes the fact that customers are differentiated on multiple dimensions in terms of their willingness to pay for data and for accessing liquidity. Platform pricing of market data and executions enables NASDAQ to design a plan that will appeal to a broader group of potential customers—in this case those serving retail investors—and stimulate overall sales of both data and trading. NASDAQ expects that bundling will be more appealing to its customers than offering discounts based only on the volume of one kind of activity or another, as it has done in the past. By conditioning the discount on two activities, NASDAQ can achieve improved participation from both retail brokers that distribute data and their order-providing customers, as compared to a disaggregated pricing approach.[13]

Given the fierce competition between platforms, as evidenced by rapid shifts in order flow and price cutting behavior

[9] This point was recognized over a century ago by the British economist Alfred Marshall, who noted the inextricability of producing wool and mutton and the inextricable nature of the costs associated with such production.

[10] *See, e.g.,* Securities Exchange Act Release No. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR–NSX–2010–06). It has also been reported that NYSE Amex has offered equity incentives to active members. While Nasdaq is aware of no Amex rule filing with the Commission, Amex consistently refers publicly to the "semi-mutualization." program. *See, e.g.,* NYSE Euronext Brings Partners Into Options Market (Dow Jones Newswires, September 9, 2009); Comments of Duncan Neiderauer at NYSE Euronext Q3 2009 Earnings Call (October 30, 2009).

[11] Similarly, Marshall's sheep farmer would be expected to cover his costs of production through the sale of both wool and mutton, and it would be unreasonable for sweater-wearers to demand free sweaters subsidized by consumers of mutton. Moreover, in contrast to sheep farming, consumption of each of NASDAQ's main products enables further production and consumption of the other—more executions translate into more data, and more data usage encourages more executions. Accordingly, as discussed below, there is no basis in the Act for requiring these inextricably linked products to be priced in isolation from one another. Such a result makes no more economic sense than requiring the price of a live sheep to be divorced from the price of wool and mutton.

[12] Subsequently, BATS has begun to charge for certain of its data products, signaling a shift in strategy to recover a greater percentage of its costs through data, rather than using data solely as a means to draw (fee-liable) orders to its market.

[13] Bundled pricing is also evident—indeed, it arguably finds its most complete expression—in exchange programs to offer equity ownership to favored members. Equity allows its owner to participate in the upside of all aspects of an exchange's operations, including executions, data, and listings. Thus, equity shares offered in exchange for liquidity provision offset the costs of all exchange products that the favored member consumes, effectively translating into an across-the-board discount and encouraging further consumption that enhances the value of the equity. Moreover, participation in such programs is conditioned upon being a member that directs order flow to the exchange in question, thereby excluding non-members, such as non-broker data distributors, as well as members that choose to direct order flow elsewhere. Moreover, an equity distribution program cannot be open-ended without diluting its value to the first recipients. Accordingly, once the equity distribution program is closed, incumbent owners benefit on an ongoing basis and new members are frozen out.

in markets for data, the competitive concerns potentially implicated by bundling are not present here. Competitive concerns from a practice of bundling discounts across a range of products may potentially arise when such bundling is used to foreclose entry (expansion) of rival firms that may not be able to offer an array of products as broad as that offered by an incumbent. In the instant case it is not likely that the combined offer will induce rival exchanges to exit (or become less competitively potent due to a reduction in volume), since many of NASDAQ's competitors command a comparably strong measure of market share in the relevant markets. Accordingly, their product offerings can readily compete with NASDAQ's in terms of execution functionality, depth of data, and price (included, if they deem it appropriate, bundled prices). It is also not likely that the combined offer will have the effect of creating significant barriers to entry or expansion for new exchanges. Current conditions of market fragmentation underscore the absence of barriers to entry in the market to attract and execute order flow. Because executions necessarily create data, barriers to entry in that market are correspondingly low.[14]

Price Differentiation Is Consistent With the Exchange Act

For many years, exchanges have engaged in and the Commission has accepted the practice of price differentiation, both in the context of market data as well as in the context of executions. With respect to market data, NASDAQ and NYSE in their capacities as network processors and exchanges have differentiated in pricing between professional and non-professional market data users often charging professionals many times more than non-professionals for using the same data. For example, consolidated data for NASDAQ stocks costs non-professional investors just one dollar per month, whereas professional investors pay twenty dollars per month for the same data. Also, NASDAQ currently charges $15 per terminal for its TotalView product to non-professionals, while professional investors pay roughly five times the non-professional rate. This reflects the value of the service to various constituencies (*i.e.,* lower prices are charged to consumers with more elastic demand) and allows both types of investors to contribute to the high fixed costs of operating an exchange platform.[15] Thus, one of the two bases for differentiation employed here—reduced prices for non-professional data usage—is completely consistent with economic theory and past Commission precedent.

Similarly, the Commission has long accepted price differentiation between and among members of trading platforms that provide and take liquidity to execute trades. For example, exchanges have offered and continue to offer differential pricing based on absolute volume, incremental volume, order type, ticker symbol, routing strategy, stock price, equity ownership,[16] and other characteristics. Other platforms, including electronic communications networks and other forms of alternative trading systems ("ATSs"), including dark pools, differentiate on these dimensions and, NASDAQ understands, other dimensions that exchanges are prohibited from using.[17] The differentiation that NASDAQ's proposes here—higher rebates for larger liquidity providers—is entirely consistent with past precedent and with the Act as interpreted and applied by the Commission.

Thus, the Commission has accepted in individual form the precise elements of the price differentiation that NASDAQ is proposing here in joint form. As explained above and in Exhibit 3, this is especially appropriate where the products subject to the joint pricing—market data and executions—are themselves joint products of a single platform: Joint pricing will allow exchanges to structure fees that recognize the contribution of particular classes of members to the creation of the products and thereby broaden output and reduce fees.

The Commission should also recognize that trading platform operations are characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to "upgrade" the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the Internet after being purchased).[18] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of information that is distributed) and are each subject to significant scale economies.[19]

That NASDAQ's platform produces market information and executions jointly and in scale does not mean that either of the joint products should be, or even can be, offered at no charge or at marginal cost. Marginal cost pricing is not feasible when there are increasing returns to scale because if all sales were priced at marginal cost, NASDAQ would be unable to defray its platform costs of providing the joint products. Moreover, to offer market data at no cost would require NASDAQ to raise the cost of providing execution services because it would require execution services to cover 100 percent of the recovery of the joint and common costs of both execution services and market data. While this may be a viable choice for some platforms, individual platform operators can and do reasonably choose other pricing models to allocate the recovery of cost between the joint products. At the same time, as discussed below and in Exhibit 3, competition between platforms clearly constrains the ability of platform operators to price execution services and market data products.

The Commission has previously stated, in *dicta,* that "the Exchange Act precludes exchanges from adopting terms for data distribution that unfairly discriminate by favoring participants in

[14] A further discussion of competitive conditions in the market for exchange data is provided in NASDAQ's "Statement on Burden on Competition" below.

[15] As discussed in Exhibit 3, charging lower fees to non-professional consumers increases overall economic welfare by increasing output—in this case, providing more data to more investors—and avoids two equally undesirable alternatives: (i) Requiring the firm to charge uniformly *high* prices that constrict demand, or (ii) insisting on uniformly low prices at marginal cost (in this case, zero or close to zero) that do not allow the firm to cover its fixed costs and thereby lead to bankruptcy.

[16] An equity ownership program in which a member receives equity in exchange for its initial order flow commitment gives rise to differential pricing in which two classes of participants that thereafter engage in the same behavior are treated differently on an ongoing basis: The equity owner is rewarded for participation through the increased value of its stock, and the non-owner is not.

[17] For example, we understand that ATSs routinely negotiate individualized pricing packages with their subscribers, and deny access to disfavored users.

[18] *See* William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," *Antitrust Law Journal,* Vol. 70, No. 3, 2003.

[19] This is not the case with Marshall's sheep farming. Sheep are likely produced with constant or increasing marginal cost, and the pricing complication is confined to the most efficient recovery of the marginal cost of a sheep.

an exchange's market or penalizing participants in other markets." [20] The Commission provided no analysis in support of this statement. NASDAQ believes that consideration of the joint nature of the products in question and the Commission's precedents will allow a more developed analysis of conduct that constitutes unfair discrimination under the Act. As noted above, the Commission has allowed exchanges to price discriminate in a wide range of respects, including, for example, volume-based execution discounts that directly favor participants in the exchange's market, discounts on uses of particular order types or strategies that favor participants with certain trading models, and selective equity ownership that provides effective discounts on all of the exchange's products, including data, and that discriminates in favor of active participants in the exchange's market during a set offering period. Moreover, in light of the joint nature of an exchange's transaction and data products, uniform fees—requiring exchanges to charge the same fees to data consumers that help to produce data as it charges to those who do not—could be said to discriminate against participants by requiring them to pay fees that are not allocated based on the value of their participation in the market. Thus, if it is fair to discount execution fees to liquidity providers because they add value to the market place, it should also be considered fair to discount data fees to liquidity providers because they add value to data.

In addition, it is difficult to discern a reasonable policy goal behind a strict prohibition on data discounts that consider transaction activity. As noted above and in Exhibit 3, differences in pricing may increase economic welfare by allowing greater distribution than would otherwise be the case, and also, in this case, enhance the value of NASDAQ's joint product to the extent that greater consumption of data encourages further investor activity, which in turn results in the production of more data. Moreover, differentiating pricing based on reasonable distinctions among consumers cannot be considered unfair under the Act, since the Commission has approved numerous instances of such distinctions. If the Commission were to adopt such a prohibition, therefore, it would seem to be driven by a concern that exchanges might use bundled data pricing in an anticompetitive manner.[21]

This concern would be reasonable only if the exchange actually enjoyed substantial market power in the data segment of the market and could use it to attempt to reduce competition in the transactions segment. Thus, if all market participants needed data from a particular exchange to operate, and the exchange conditioned low data fees on market participants directing order flow to the exchange, the exchange might attempt to use its control over data to monopolize trading as well. These conditions are not present here, nor is it likely that they could ever arise in these markets. First, an exchange that attempted to restrict the provision of data to disfavored recipients would be restricting access to one of the key mechanisms by which the exchange attracts orders to its matching engine. Moreover, as discussed in detail throughout this filing, the market participants with the most demand for an exchange's data are the ones that actually trade on that exchange, but no one is required to trade on any particular exchange or to consume its data. Indeed, no single exchange controls proprietary data that is indispensible to any particular market participant. Therefore, an effort to use pricing to "penalize" market participants for sending orders to other venues would likely succeed only in driving more orders to those venues and cutting demand for data as well. Finally, because the marginal cost of selling data to one more customer is zero or close to zero, exchanges have every interest in selling as much data as possible, in order to ensure that they cover their high fixed costs. As a result, exchanges readily sell data to market participants and also to non-market participants that direct no order flow to the exchange at all. Penalizing "disloyal" consumers of data would do nothing more than diminish the exchange's revenue opportunities.

Under traditional antitrust analysis, pricing systems under which the prices for two products are "bundled" have generally been found to be beneficial to consumers, rather than anticompetitive. A court will not uphold a challenge to bundled pricing unless it is clear that a party has market power in one product and is using the bundled pricing to extend its market power to another product. "Buyers often find package sales attractive; a seller's decision to offer such packages can merely be an attempt to compete effectively—conduct that is entirely consistent with the Sherman Act." *Jefferson Parish Hosp. Dist. No. 2* v. *Hyde,* 466 U.S. 2, 12 (1984). As noted in the recent report of a bipartisan commission on antitrust law,[22] "[l]arge and small firms, incumbents, and new entrants use bundled discounts and rebates in a wide variety of industries and market circumstances. Because they involve lower prices, bundled discounts and bundled rebates typically benefit consumers." The report noted that bundled discounts can be used appropriately to reduce the seller's costs, to improve the quality of products, to advertise the benefits of related products, and to increase demand for a product. If, as is the case here, the markets for both bundled products are competitive, bundled pricing will not give rise to any competitive concerns.

Nevertheless, since the Act clearly bars discrimination that is unfair, it would be reasonable for the Commission to disapprove fees or other conditions to access that appear to have anticompetitive aims, such as rules that selectively prohibit some parties from having access to data. The Commission should not, however, block efforts by exchanges to reduce their prices merely because they do not cut prices "across the board." As the Supreme Court has recognized, "cutting prices in order to increase business often is the very essence of competition." *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574, 594 (1986). "Mistaken inferences in cases" involving alleged harm from low prices "are especially costly, because they chill the very conduct the antitrust laws are designed to protect." *Matsushita,* 475 U.S. at 594. In this case, disapproval of NASDAQ's proposed fee reductions would leave the fees for NASDAQ depth products untouched: consumers that would have paid lower fees under the proposal will

[20] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21), *vacated by NetCoalition* v. *SEC,* No. 09–1042 (DC Cir. 2010).

[21] Another possibility is that the Commission might somehow conclude that transactions and data must be priced in isolation of one another, despite their wool/mutton nature, merely to ensure that data consumers who do not use transaction services pay the same fees as those who do. There is nothing in the Act that speaks directly to maintaining a dichotomy between products in establishing their prices, and the Act clearly allows differential pricing within a product category. Nor would it be reasonable for the Commission to conclude that fairness mandates that consumers with different cost and benefit profiles nevertheless pay the same fees. Thus, before the Commission concludes that a particular price differential is "unfair," it should first conclude that the differential lacks a reasonable basis in fact. NASDAQ respectfully maintains that the Commission may not reach such a conclusion in this instance.

[22] Report and Recommendations of the Antitrust Modernization Commission (April 2007) (available at *http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf*).

continue to pay higher fees, and other consumers will pay exactly what they do now, and exactly what they would have paid if the proposal had gone into effect. It is difficult to see how the interests of any parties, or of the marketplace as a whole, would be served by that outcome.

Conclusion

This filing reduces prices for NASDAQ market data and for trading on NASDAQ. It is designed to promote NASDAQ's and the Commission's goal of better serving retail investors whose participation in NASDAQ's market benefits NASDAQ, its listed companies, its market quality, and the quality of its data products. It is also a competitive response to other trading venues. In short, NASDAQ is cutting prices for customers that are highly valued to NASDAQ and are important to the health of U.S. capital market.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act.[23] In particular, NASDAQ believes that the proposal is consistent with Section 6(b)(4) of the Act,[24] in that it provides an equitable allocation of reasonable fees among users and recipients of the data, Section 6(b)(5) of the Act,[25] in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, Section 6(b)(8) of the Act,[26] in that it does not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act, and Rule 603(a) of Regulation NMS,[27] in that it provides for distribution of information with respect to quotations for or transactions in an NMS stock on terms that are fair and reasonable and are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers [28] increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ Depth Data Products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[29]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton [sic]* v. *SEC,* No. 09–1042 (DC Cir. 2010) upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion* [sic], at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' " [30]

The Court in *NetCoalition,* while upholding the Commission conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. For the reasons discussed in this filing and in Exhibit 3, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[31] In addition, as discussed in the "Purpose" section of the filing above, NASDAQ believes that it is not inequitable or unfairly discriminatory to establish discounts for market data fees that take account of a market participant's transaction volumes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition. To the contrary, NASDAQ's proposed price reduction in response to competitive pricing offers is the essence of competition. As the Supreme Court has recognized, "cutting prices in order to increase business often is the very essence of competition." *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574, 594 (1986). NASDAQ is acting pro-competitively by offering more attractive pricing, designed to attract order flow and business away from competing platforms:

> When a firm * * * lowers prices but maintains them above predatory levels, the business lost by rivals cannot be viewed as an "anticompetitive" consequence of the claimed violation. A firm complaining about the harm it suffers from nonpredatory price competition "is really claiming that it [is] unable to raise prices." This is not *antitrust* injury; indeed, "cutting prices in order to increase business often is the very essence of competition." The antitrust laws were

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(4).

[25] 15 U.S.C. 78f(b)(5),

[26] 15 U.S.C. 78f(b)(8).

[27] 17 CFR 202.603(a).

[28] It should be stressed that Rule 603, 17 CFR 202.603(a), both allows broker-dealers to distribute their own data, singly or on an aggregated basis, and generally subjects them to the same regulatory standards as exchanges. Thus, any broker or dealer that distributes information must do so on terms that are not unreasonably discriminatory, and any broker or dealer that distributes information for which it is the exclusive source must do so on terms that are fair and reasonable. As a result, to the extent that the Commission establishes procedures or legal standards applicable to exchange data, it must apply the same procedures and standards to broker-dealer data.

[29] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[30] *NetCoaliton [sic]* v. *SEC,* No. 09–1042 (DC Cir. 2010) at p. 16, [sic].

[31] It should also be noted that Section 916 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a formal proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

enacted for "the protection of *competition,* not *competitors.*"

Atlantic Richfield Co. v. *USA Petroleum Co.,* 495 U.S. 328, 337–38 (1990) (emphasis in original; citations omitted).

Platform Competition Is Intense

As the Commission recently recognized,[32] the market for transaction execution and routing services is highly competitive, and the market for proprietary data products is complementary to it, since the ultimate goal of such products is to attract further order flow to an exchange. Order flow is immediately transportable to other venues in response to differences in cost or value and in doing so directly impact the quality and quantity of data at any given platform.

With regard to the market for executions, broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organization ("SRO") markets, as well as broker-dealers ("BDs") and aggregators such as the Direct Edge and LavaFlow electronic communications networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

Public markets such as NASDAQ also compete for order flow and executions with dark pools and other ATSs that provide similar services under a lighter regulatory burden.[33] One such disparity that directly affects competition for order flow, executions, and market data is the greater flexibility of dark trading systems and certain ATSs to differentiate between their subscribers. Another is the requirement imposed on exchanges and not upon ATSs to file proposed pricing schedules and changes, thereby subjecting exchanges prices to greater regulatory scrutiny, intervention and delay. NASDAQ has questioned and continues to question whether such disparities remain justified (assuming they once were justified) in light of current competition between exchanges and ATs and including increasingly high levels of executions occurring in ATSs.

Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSEArca, BATS, and Direct Edge.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-BDs such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that depth data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and distribution of proprietary data products, as Archipelago, BATS, and DirectEdge did prior to registering as SROs. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Although their business models may differ, vendors exercise pricing discipline because they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading, and Direct Edge. Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and LavaFlow.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its "Bookviewer" to help customers utilize data. NASDAQ has created TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for depth-of-book data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The proposed rule change is a direct response to this competition, and it is motivated by the conclusion that Tier 1, Tier 2 and Tier 3 Firms provide benefits to NASDAQ and its customers across business lines and therefore merit pricing incentives to join or remain in these tiers. It recognizes the concern that the order flow and data product use that such firms currently bring to NASDAQ may migrate elsewhere if their contributions are not appropriately recognized. At the same time, if other customers determine that their fees are too high in comparison to those paid by firms qualifying for the discount, they will take their business to other venues.

[32] *Id.*

[33] *See* Letter dated April 30, 2010, from Joan Conley, Senior vice President and Corporate Secretary, The NASDAQ Stock Market LLC, to Elizabeth Murphy, Secretary, Securities and Exchange Commission (commenting on regulatory disparities and arbitrage in response to Concept Release on Market Structure).

Thus, the proposal must strike a balance between growing and retaining the business of actual and potential Tier 1 and Tier 2 Firms and the business of firms that lack the volume of business to become eligible. In light of the highly competitive nature of these markets, NASDAQ's revenues and market share are likely to be diminished by the proposal if it strikes this balance in the wrong way.[34]

The NetCoalition Decision

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that competition for order flow adequately constrains the pricing of depth-of-book data.[35] However, the *Netcoalition* [sic] court did cite favorably an economic study by Ordover and Bamberger which concluded that "[a]lthough an exchange may price its trade execution fees higher and its market data fees lower (or vice versa), because of "platform" competition the exchange nonetheless receives the same return from the two "joint products" in the aggregate."[36]

Accordingly, NASDAQ is submitting along with this filing additional comments from Ordover and Bamberger expanding upon the impact of platform competition on the pricing of joint products, and in particular on the application of that theory to NASDAQ's current proposal. Among the conclusions that Ordover and Bamberger reach are:

NASDAQ is subject to significant competitive forces in setting the prices and other terms of execution services and proprietary data products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of the array of its products, including the joint products at issue here. In particular, cross-platform competition, and the adverse effects from overpricing proprietary information on the volume of trading on the platform, constrain the pricing of proprietary information.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and so in the long run reduces the quality of the information generated by the exchange.

NASDAQ's Platform pricing can be described as a type of "differential pricing" and "bundling." Differential pricing in markets with high fixed costs and low incremental costs is common, efficient, and not anticompetitive. "Bundling" also is common and generally procompetitive.

NASDAQ's joint products are produced under the conditions of high fixed costs, which are also joint and common to a range of products, and low (or zero) marginal or incremental cost of serving an additional customer. In industries with these cost characteristics, charging all customers the same price is not economically efficient.

Additional evidence cited by NYSE Arca in SR–NYSE Arca–2010–097 which was not before the *NetCoalition* court also demonstrates that availability of depth data attracts order flow and that competition for order flow can constrain the price of market data:

1. Terrence Hendershott & Charles M. Jones, *Island Goes Dark: Transparence, Fragmentation, and Regulation,* 18 Review of Financial Studies 743 (2005);

2. Charts and Tables referenced in Exhibit 3B to that filing;

3. PHB Hagler Bailly, Inc., "Issues Surrounding Cost-Based Regulation of Market Data Prices;" and

4. PHB Hagler Bailly, Inc., "The Economic Perspective on Regulation of Market Data."

NASDAQ also submits that in and of itself, NASDAQ's decision voluntarily to cap fees on existing products is evidence of market forces at work. The instant proposal does just that, creating an expanded enterprise license on two product classes. Retail investors will be the primary beneficiaries.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[37] 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–NASDAQ–2011–010 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.

[34] The Commission has recognized that an exchange's failure to strike this balance correctly will only harm the exchange. "[M]any market participants would be unlikely to purchase the exchange's data products if it sets fees that are inequitable, unfair, unreasonable, or unreasonably discriminatory…. For example, an exchange's attempt to impose unreasonably or unfairly discriminatory fees on a certain category of customers would likely be counter-productive for the exchange because, in a competitive environment, such customers generally would be able to respond by using alternatives to the exchanges data." *Id.*

[35] The *NetCoalition* court did not consider or address the statutory amendments encompassed by the Dodd-Frank Act in any way.

[36] *See NetCoalition* at fn. 30.

[37] 15 U.S.C. 78s(b)(3)(a)(ii).

All submissions should refer to File Number SR–NASDAQ–2011–010. 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,[38] 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–010 and should be submitted on or before February 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1711 Filed 1–26–11; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice:7308]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: National Security Language Initiative for Youth (NSLI–Y)

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/PY–11–03.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates

Application Deadline: March 24, 2011.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for one cooperative agreement for the National Security Language Initiative for Youth (NSLI–Y), which provides overseas foreign language instruction for American high school students and those recently graduated. Public and private non-profit organizations, meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3), may submit proposals to cooperate with ECA in the overall administration of NSLI–Y organizational responsibilities and the implementation of overseas language programs of two different durations for approximately 610 total individual participant scholarships according to the duration and language distribution detailed in the Project Objectives, Goals and Implementation (POGI). NSLI–Y programs funded by this award will take place between June 2012 and June 2013. NSLI–Y is an important component of a multi-agency USG initiative to increase American citizens' ability to engage with people throughout the world who speak Arabic, Chinese (Mandarin), Indic (Hindi), Korean, Persian (Tajiki or Farsi), Russian and Turkish. *Please note:* ECA reserves the right to add or subtract languages and countries based on the needs of the Department, security considerations at the time of implementation and the overall objectives of the program. The Bureau anticipates that the single award recipient will manage the comprehensive organizational and administrative responsibilities of this program as well as the identification of qualified sub-award recipients known as "implementing organizations" to implement the overseas language programs. Under this award, the award recipient may also serve as an implementing organization.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: ECA is supporting the participation of American high school students and those who have recently graduated (who are U.S. citizens and between the ages of 15 and 18 at the start of the program), in intensive, substantive overseas foreign language study to dramatically increase the number of Americans learning, speaking and using critical need foreign languages throughout their academic and professional lives. For additional information about NSLI–Y, please visit *http://exchanges.state.gov/youth/programs/nsli.html*.

It is anticipated that the total amount of funding available to support the overall administration and overseas language program implementation in the seven current NSLI–Y languages is $9,000,000, pending the availability of funds. This amount is intended to support approximately 610 scholarships, including comprehensive administrative and program costs.

Overseas language programs, in countries where the seven NSLI–Y languages are widely spoken, will provide a minimum of two articulated and integrated language learning environments: (1) Structured classroom target language instruction and (2) less formal, interactive and/or applied learning opportunities. These opportunities are offered through a comprehensive exchange experience that primarily emphasizes language acquisition.

Applicants may submit only one proposal under this competition. If multiple proposals are received from the same applicant, all submissions will be declared ineligible and receive no further consideration in the review process.

ECA is seeking one organization that will (1) administer and organize the diverse and comprehensive NSLI–Y overseas intensive language programs and (2) engage additional sub-award implementing organizations with relevant expertise in one or more of the target languages to implement the overseas language programs for high school students across the current seven NSLI–Y languages. Organizations applying for this award must demonstrate their capacity for

[38] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[39] 17 CFR 200.30–3(a)(12).

conducting projects of this nature, focusing on four areas of competency:

(1) *Administrative and Organizational Experience:* Administrative and organizational experience and expertise that includes applicant recruitment and selection, planning and execution, management, monitoring of participants' safety and welfare, evaluation of language acquisition and program effectiveness, and follow-on/alumni activities;

(2) *Language Instruction and Related Activities:* Provision of foreign language instruction programs and related language-focused educational/cultural activities as outlined in this document;

(3) *Assessment:* Language level and age appropriate programming for the target audience; and

(4) *Overseas Program Experience:* Experience in conducting programs in the proposed partner country/countries or locations.

The goals of the NSLI–Y program are:

(1) *Language Learning:* Improve the ability of Americans to engage with the people of Arabic, Chinese (Mandarin), Indic (Hindi), Korean, Persian (Tajiki or Farsi), Russian and Turkish-speaking countries in the language of the country by promoting language learning to advanced levels;

(2) *Cultural Understanding:* Assist in developing a cadre of Americans whose foreign language skills enhance related cultural understanding and who use these language and cultural skills to advance international dialogue and compete effectively in the global economy;

(3) *Scholarship:* Provide a tangible incentive for the learning and use of foreign languages by creating and optimizing overseas language study opportunities for American high school students; and

(4) *Commitment:* Spark a lifetime interest in foreign languages and cultures among American youth.

NSLI–Y project learning objectives include:

(1) *Acquisition:* Participants will demonstrate a substantive, measurable increase in language proficiency (oral comprehension, speaking, reading and writing), as verified through pre- and post-program assessment with a standardized language assessment tool;

(2) *Cultural Understanding:* Participants will demonstrate a deeper understanding of the host country's society, institutions and culture; and

(3) *Multiplier Effect:* Participants will share experiences as young Americans with their overseas peers through the use of common language.

While the NSLI–Y overseas language programs are active in multiple countries/locations, it is important that a single worldwide program identity be established and maintained. Accordingly, ECA anticipates making one single award to an organization/institution with the capacity and experience to manage the administrative and organizational responsibilities, and which would be responsible for engaging additional sub-award implementing organizations, where necessary, to meet the goals and objectives of the NSLI–Y program. Language study must be the primary focus of the program.

Overseas language programs may be implemented by the award recipient, where the experience and overseas institutional capacity exists or can be satisfactorily developed, and by sub-award implementing organizations identified and proposed by the award recipient. Through sub-award agreements with the award recipient and under the administration of, and in coordination with, the award recipient, ECA anticipates that overseas language programs will be implemented and administered for participants in countries/locations where Arabic, Chinese (Mandarin), Indic (Hindi), Korean, Persian (Tajiki or Farsi), Russian and Turkish are widely spoken. Like the award recipient, should it choose to implement overseas programs, sub-award implementing organizations must have the necessary capacity in the partner country/countries or location to implement the program through either their own offices or partner institutions. In their capacity as an implementing organization, the award recipient and the sub-award implementing organizations may demonstrate their direct expertise or they may partner with other organizations/institutions to best respond to the requirements outlined in this RFGP. In the proposal, the applicant must clearly demonstrate how it will accomplish overseas language program implementation. ECA reserves the right of final approval for all proposed sub-award implementing organizations.

Overseas language programs will be of two durations: six- to eight-week "short" duration, and eight- to nine-month "long" duration. The applicant is advised to consider both the traditional U.S. academic schedule and that of the proposed overseas language institution when envisioning and detailing NSLI–Y overseas programs. "Short" duration programs must provide a minimum of 120 contact/classroom hours. "Long" duration programs must be structured in a way that meets a minimum standard of ten classroom contact hours established by the award recipient in consultation with ECA and includes daily language instruction (with the exception of weekends), unless an alternative language delivery model receives prior concurrence from ECA. NSLI–Y participants must be in language institutions/academic environments where the target language is the language of instruction, unless an alternative language environment receives prior concurrence from ECA. The award recipient and its sub-award implementing organizations may propose either short or long duration programs or both, according to the guidelines provided in the POGI, and may propose overseas programs in one or as many languages as they have the capacity and institutional relationships to support. The applicant must ensure that plans are submitted to implement programs in all seven languages across all program durations, as outlined in the POGI. The Bureau anticipates that there will be no more than one long duration implementing organization per language per country/location and that the minimum number of participants is five; there may be multiple short duration implementing organizations per language per country/location. The period of time within which short and long duration programs must be implemented and concluded is June 2012 through June 2013.

Role of ECA

In a cooperative agreement, ECA is substantially involved in program activities above and beyond routine monitoring. ECA activities and responsibilities for this program include but are not limited to:

(1) *Program Components:* Guidance in the execution of all program components, providing concurrence as necessary.

(2) *Program Documents:* Materials review of all print and online documents prior to publication and dissemination, including application forms, the Web site and brochure. This includes individual implementing organizations' instructional materials for the classroom portion of the language learning and the ideas/plans for the out-of-classroom, applied language-learning opportunities, including volunteer projects, guided internships, excursions, *etc.* These materials must be provided to ECA at least two months in advance of the start of the overseas program. The award recipient must seek and obtain written ECA concurrence on substantive and logistical changes in the program, if changes occur after this material has been provided.

(3) *Promotion:* Collaboration to publicize the program.

(4) *Recruitment:* Review and approval of the participant recruitment strategy.

(5) *Selection:* Concurrence on participant finalists and alternates.

(6) *Notification:* Review and approval of participant award documentation, including the NSLI–Y Terms and Conditions.

(7) *Assessment:* Support of the award recipient's standardized pre- and post-program testing of participants' language proficiency and progress.

(8) *Program Coordination:* Assist in liaison with appropriate Department of State offices, including the regional bureaus and overseas posts. Implementing organizations are required to directly liaise early and often with overseas posts (the relevant embassy and/or consulate Public Affairs Section or PAS) in order to obtain concurrence on general program location, concurrence on host family or accommodation location, participation in a post-arrival briefing for the NSLI–Y participants and assistance in the event of a grave emergency. The award recipient is responsible for ensuring that these contacts are established in a timely fashion and maintained throughout the implementation of the program.

(9) *Host Government Liaison:* Cooperation with the award recipient and post, as necessary, in the event that coordination with host government officials is needed.

(10) *Security Considerations:* Modifications to program locations and/or logistics based on security considerations and overall objectives of the program.

(11) *Inter-Agency NSLI Programs:* Assistance with promoting continuity among inter-agency NSLI programs, *i.e.,* Startalk, The Language Flagship, the Critical Language Scholarships (CLS), Teachers of Critical Languages Program (TCLP) and Intensive Summer Language Institutes for Teachers (ISLI).

(12) *Pre-Departure Orientations:* Collaboration on participant pre-departure orientations (PDOs) and participating in them, when possible.

(13) *Changes to Implementing Organizations:* Concurrence on any possible additional implementing organizations that the award recipient might suggest to more effectively meet scholarship demand in a particular language or languages for a particular duration or durations.

(14) *Planning Meetings:* Collaboration on and participation in organizational/planning meeting(s).

(15) *Bureau Evaluation Surveys:* Access to Bureau-approved evaluation surveys (E–Goals) links for participant completion and results for program management.

(16) *Alumni Activities:* Input on alumni activities and follow-up events.

(17) *Travel Registration and Health Benefits:* Facilitation of the award recipients' access to the Department of State's international travel registration system (Smart Travel Enrollment Program or STEP), ASPE health benefits program and to relevant consular forms.

Role of Public Affairs Section/Embassy/Consulate

ECA seeks to minimize the burden on posts (embassies and consulates) in whose consular districts the NSLI–Y programs are implemented. Therefore, the proposal must demonstrate the applicant's ability to perform the requirements independent of post but also its commitment to working with posts as described in the RFGP and POGI. Applicants are advised to provide examples of past successful programs and the ways in which collaboration with posts strengthened the management and monitoring of the program and its participants. In order to promote this important overseas relationship, ECA anticipates that the award recipient and its implementing organizations have the experience, knowledge and staffing to carry out the daily operations, including on-program support, in the host locations. ECA expects that the overseas implementing organizations and relevant Public Affairs Sections (PAS) will establish the level of cooperation about the program that suits both parties. Implementing organizations are required to request and obtain post's concurrence on general program location, host family or other accommodation location and involvement in a post-arrival orientation in order to apprise NSLI–Y participants of security and other relevant issues. ECA expects that implementing organizations, under the guidance of the award recipient, will handle urgent medical crises, natural disasters or other unforeseen problems, but that they will communicate with and turn to post, as necessary and appropriate, given that NSLI–Y participants are American high school students whose welfare and safety are paramount. Post must always be informed in the event that a NSLI–Y participant is involved in civil or criminal police matters.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2011 (pending availability of funds).

Approximate Total Funding: $9,000,000.

Approximate Number of Awards: 1.

Approximate Average Award: $9,000,000.

Anticipated Award Date: Pending availability of funds, July 2011.

Anticipated Project Completion Date: December 31, 2013.

Additional Information

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

III.3a. *Guidelines:* Bureau cooperative agreement/grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $9,000,000, to support administrative and program costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to

apply to ECA under this competition. Applicants should demonstrate extensive experience in administering exchange programs for secondary school students in compliance with Federal regulations. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

III.3a.1. *Sub-Awards:* In proposing sub-award implementing organizations, the applicant must demonstrate the capacity, experience and expertise of the proposed sub-award implementing organizations in the particular language and country/location where the language program is proposed. ECA anticipates that applicants will propose multiple organizations as sub-award implementing organizations to implement overseas language programs because of the scope, language acquisition focus and geographic breadth of the programs to be implemented under this cooperative agreement. This is encouraged to strengthen the award recipient's capacity for each of the seven languages across the various countries/locations in which NSLI–Y programs are to be implemented. Each U.S.-based implementing organization must exhibit an established effective relationship with the overseas implementing organization to guide, direct, influence, manage and monitor each overseas language program (and the overseas institutional partner implementing it, where relevant) so that it meets the NSLI–Y goals. It is the award recipient, however, that must be fully responsible for the oversight, monitoring and management of sub-award implementing organizations. Further information on sub-agreements is provided in the OMB Circulars referenced in Section VI.2.

III.3b. *Technical Eligibility:* All proposals must comply with the following or they will result in the proposal being declared technically ineligible and given no further consideration in the review process:

III.3b.1. *Commitment:* Proposal narratives must demonstrate a commitment to short and long duration overseas language programs which must begin no earlier than June 2012 and end no later than June 2013.

III.3b.2. *Monitoring Plan:* Proposals must detail methods for monitoring NSLI–Y participant safety and welfare while on program, as well as plans to provide on-program support to NSLI–Y participants.

III.3b.3. *Per Capita Costs:* Proposals must cap per participant costs for short duration programs at $11,000 and for long duration programs at $21,500. This approximate cap may change over the life of the cooperative agreement, contingent upon ECA concurrence.

III.3b.4. *Assessment:* Proposals must identify the use of a standardized and recognized language assessment tool, subject to ECA approval, to assist with participant placement into the appropriate level of language classes in overseas programs and to evaluate the language gain by individual scholarship recipients.

III.3b.5. *Letters of Commitment:* Proposals must identify and include letters of commitment for all implementing organizations for all seven languages with proposed overseas language institutions identified and the proposed language levels to be taught at each. A letter of commitment from the proposed overseas language institution(s) should be included. The sole exception exists in the event that the award recipient determines that it unexpectedly cannot meet overseas program capacity outlined in this RFGP with the sub-award implementing organizations identified in its proposal. The award recipient may propose the addition of implementing organization(s), subject to ECA's approval.

III.3b.6. *Letter of Acknowledgment:* Proposals should include a letter of acknowledgment from the relevant overseas post Public Affairs Section (U.S. embassy/consulate, also known as "post," in whose district the proposed program will take place.) When requesting a letter of acknowledgment from post, the award recipient must:

(1) *Language Program Location:* Identify the location (city) in which the language program is proposed to take place;

(2) *Language Provider(s)/Institution(s):* Identify the proposed language provider(s)/institution(s);

(3) *Participant Numbers:* Specify the proposed number of participants to be programmed in a particular location;

(4) *Program Duration:* Specify the proposed duration; and

(5) *Accommodations:* Describe the proposed accommodations.

III.3b.7. *Proposal Submissions:* Eligible applicants may not submit more than one proposal in this competition.

Please note: Applicant organizations are defined by their legal name, DUNS and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

III.3b.8. *Sub-Award Proposal Submissions:* Eligible sub-award implementing organizations may not be included in more than one proposal in this competition. *Please note:* Applicant organizations are defined by their legal name, DUNS number and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the NSLI–Y Program Specialist, Linda Beach, at ECA/PE/C/PY, U.S. Department of State, SA–5, 3–H11, 2200 C St., NW., Washington, DC 20037, telephone: 202–632–6414 or *beachlf@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–11–03 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please *see* section IV.3f for further information.

The Solicitation Package contains the PSI document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Linda Beach, NSLI–Y Program Specialist, and refer to the Funding Opportunity Number ECA/PE/C/PY–11–03 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. *DUNS Number:* You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. *Proposal Contents:* All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory PSI document and the POGI document for additional formatting and technical requirements.

IV.3c. *CCR Registration, DUNS Number, Non-Profit Status and Other Documentation:* All Federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. *All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.*

You must have nonprofit status with the IRS at the time of application. *Please note:* Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. *Proposal Narrative:* Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. While outbound American program participants do not receive J visas and are, therefore, not governed by J visa regulations, ECA monitors the award recipient's compliance with established standards that parallel J visa regulations for inbound academic year participants. These regulations are found in 22 CFR 62.25. Therefore, proposals should demonstrate and *explicitly state in writing* the applicant's capacity and willingness to meet all relevant requirements that parallel the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the screening and selection of program participants; provision of pre-arrival information and orientation to participants; regular monthly monitoring of participants; identification of, reference checking for, orientation of and regular contact with host families; proper maintenance and security of forms, record-keeping, reporting; and other requirements.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Proposals that address and encourage the participation of traditionally underserved audiences in all institutional and individual award programs and other program activities will be favorably reviewed. These audiences include, but are not limited to, women, racial and ethnic minorities, people living in underserved geographic locations, religious minorities, people of lower socio-economic status and people with disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the fullest extent deemed feasible.

Special Note on Diversity: It is a goal of the Department to ensure that all funded programs reflect the diversity of American Society. Proposals must describe plans to promote this goal across all program components and describe the way in which the applicant will encourage diversity in participant selection. Proposals should ensure that special efforts are made to recruit participants from underserved populations and locales. Selection should reflect a preference for qualified candidates who have not already studied overseas and who might not

otherwise be able to study abroad were it not for the scholarship opportunity.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other instrument plus a description of a methodology used to link outcomes to original project objectives. The Bureau expects that the recipient organization will monitor participants and be able to respond to key evaluation questions, including satisfaction with the program, language acquisition and cultural learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in language acquisition and mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. The evaluation plan should include a description of the project's objectives, anticipated project outcomes, and how and when these outcomes (performance indicators) will be measured. The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. Please also show how the project objectives link to the goals and objectives of the program, as described in this RFGP.

The monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals and objectives set out in the RFGP (listed here in increasing order of importance):

(1) *Participant satisfaction* with the program and exchange experience.

(2) *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes language acquisition, substantive (subject-specific) learning and mutual understanding.

(3) *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

(4) *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of the monitoring and evaluation plan will be judged on how well it:

(1) *Outcomes:* Specifies intended outcomes;

(2) *How Outcomes are Measured:* Gives clear descriptions of how each outcome will be measured;

(3) *When Outcomes are Measured:* Identifies when particular outcomes will be measured; and

(4) *Strategy:* Provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular, quarterly program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

The NSLI–Y program uses the Bureau's E–Goals system for evaluation and additional guidance on its use is located in the POGI.

Program monitoring includes *participant monitoring,* which focuses specifically on ensuring participants' health, safety and welfare throughout the duration of the overseas program. Proposals must include a plan to monitor the participants' safety and welfare that parallels the standards for J1 visa regulations for inbound academic year participants found in 22 CFR 62.25. They must also include a plan to monitor and report on the NSLI–Y participants' successes, including language acquisition, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique and a description of the methodology that will be used to monitor participants' health, safety and welfare. The Bureau expects that the award recipient will monitor NSLI–Y participants and be able to respond to key participant monitoring questions throughout the period of the cooperative agreement.

IV.3e. *Proposal Budget:* Please take the following information into consideration when preparing your budget:

IV.3e.1. *Comprehensive Budget:* Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. The budget request may not exceed $9,000,000 and must clearly indicate the proposed number of participants for each of the seven languages and proposed countries/locations, in accordance with the guidelines in the POGI, for the first year of this potentially three year cooperative agreement. There must be a summary budget that reflects a breakdown of both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Detailed budgets of proposed sub-award recipients should also be included.

Please refer to the Solicitation Package (POGI and/or PSI) for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: March 24, 2011.

Reference Number: ECA/PE/C/PY–11–03.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–

424 contained in the mandatory PSI of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and ten (10) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–11–03, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the "Executive Summary," "Proposal Narrative," "Budget," and "Budget Narrative" sections of the proposal in Microsoft Word and Excel format on CD–ROM to the program officer Lisa Wishman at *wishmanlb@state.gov.* As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies)/consulate(s) for its(their) review.

IV.3f.2.—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. *Contact Center Phone:* 800–518–4726. *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3f.3. *Proposal Submission:* Applicants may not submit more than one proposal in this competition. Sub-award implementing organizations may not be included in more than one proposal in this competition. *Please note:* Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, regional bureaus and Public Affairs/Diplomacy sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Quality of the program idea and planning:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and the purposes outlined in this solicitation. A detailed agenda and

relevant work plan should demonstrate the ability to ensure that the proposed project accomplishes the stated goals and objectives in the desired time frame. Proposals should demonstrate how participants will be recruited, selected, monitored, tested (before and after their overseas program) and presented with continuing language learning opportunities. Proposals should address the ways in which the award recipient and its implementing organizations will prepare and orient overseas language instructors for the unique challenges of teaching their native language to American high school students. Proposals should identify proposed language learning institutions and locations, address both in-class formal and out-of-class applied language learning and ensure that all enhancement activities (cultural excursions, guest lectures, guided internships, extra-curricular activities and volunteer projects) reinforce participant's language skills through authentic language practice and use.

(2) *Ability to achieve program goals and project objectives:* Proposals should clearly demonstrate an understanding of the program goals and project objectives and how the institution will achieve them through objectives that are reasonable, feasible and flexible (as stated in the "Purpose" section of this document under the four NSLI–Y goals and the three project objectives.) A detailed agenda and relevant work plan should demonstrate organizational competency and logistical capacity. The agenda and plan should adhere to the program overview, timetable and guidelines described in this solicitation. The substance of the language instruction and the exchange activities should be described in detail and included as an attachment. The responsibilities, capacity and expertise of implementing organizations should be clearly delineated.

(3) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity in all program aspects including but not limited to participants, host families, resident directors/group leaders, overseas peers, language instructors and overseas program venues. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientations, program meetings, resource materials and alumni activities). Please note that special effort should be made to recruit qualified candidates from underserved populations and locales. Selection should reflect a preference for qualified candidates who have not already studied overseas and who might not otherwise be able to study abroad were it not for this scholarship opportunity. Proposals that articulate a diversity plan—not just a statement of compliance—will be more favorably reviewed.

(4) *Institution's Record/Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals and objectives in a timely, professional and transparent fashion. Reviewers will assess the applicant and its implementing organizations to determine whether they offer adequate resources, expertise, experience and management of overseas relationships to fulfill program goals and objectives. The roles of the award recipient and implementing organizations should be clearly defined. Proposals should demonstrate an institutional record of successful language-focused exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(5) *Participant Monitoring:* Proposals must include a detailed monitoring plan for NSLI–Y participants. Given the importance the Bureau places on this criterion, the narrative should include sufficient explanation about how it will achieve the Bureau's goals in regard to monitoring. Appendices may be used to house additional details and supporting documentation.

(6) *Follow-on Activities:* Proposals should provide a plan for continued contact with alumni to ensure that they are tracked over time, utilized and/or organized as alumni, and provided opportunities to reinforce the knowledge and skills acquired on the NSLI–Y program. Proposals should provide a strategy for maximizing the opportunities for alumni to further their study of the target language and culture of the host country, presenting plans that are within the context of the cooperative agreement (with the Bureau financial support) and after its completion (without the Bureau's financial support). Creative, age-appropriate plans for NSLI–Y alumni who do not have access to their target language through their high school to continue their language acquisition will be favorably reviewed as will those proposals that encourage NSLI–Y alumni to continue language acquisition, particularly—although not exclusively—through other U.S.G. supported programs.

(7) *Project Evaluation:* Proposals should include a plan to evaluate the program's successes and challenges, both as the activities unfold and at the end of the program. The evaluation plan should also address the methodology to assess individual participants' language acquisition and show clear linkages between program goals/objectives and expected outcomes.

(8) *Cost-effectiveness/Cost-sharing:* Reviewers will analyze the budget for clarity and cost-effectiveness. They will also assess the rationale of the proposed budget and whether the allocation of funds is appropriate to complete tasks outlined in the project narrative. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. While lower "per participant" figures will be favorably viewed, the Bureau expects all figures to be realistic. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements;

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports. The Program Office requests that the award recipient submit Attachment B on program indicators, Attachment E on activities based on expenditures and Attachment F on program/project management;

(4) Quarterly program and financial reports which should include information on the program plan and program results to date, an analysis of evaluation findings and the quantitative and qualitative data you have available. The financial report must be submitted on the FFR form; and

(5) The award recipient must also be prepared to respond to additional Bureau requests for information and documents in a timely and effective manner.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to Section IV, Application and Submission Instruction (IV.3.d.3) above, for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Lisa Bess Wishman, NSLI–Y Program Officer, Bureau of Education and Cultural Affairs, Office of Citizen Exchanges, Youth Programs Division, ECA/PE/C/PY, ECA/PE/C/PY–11–03, U.S. Department of State, SA–5, 3–F16, 2200 C Street, NW., Washington, DC 20037, Telephone: 202–632–6082; Fax: 202–632–9355; e-mail: *WishmanLB@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–11–03.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 21, 2011.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–1786 Filed 1–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7309]

Culturally Significant Object Imported for Exhibition Determinations: "Gentile Bellini: Portrait of Caterina Cornaro, Queen of Cyprus"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition "Gentile Bellini: Portrait of Caterina Cornaro, Queen of Cyprus," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about August 2, 2011, until on or about August 7, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 20, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–1787 Filed 1–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7311]

Culturally Significant Objects Imported for Exhibition Determinations: "Bali: Art, Ritual, Performance"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Bali: Art, Ritual, Performance," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asian Art Museum of San Francisco, San Francisco, CA, from on or about February 25, 2011, until on or about September 11, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 20, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–1790 Filed 1–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7310]

Culturally Significant Objects Imported for Exhibition Determinations: "Treasures From the Hermitage: Russia's Crown Jewels"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Treasures from the Hermitage: Russia's Crown Jewels," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Houston Museum of Natural Science, Houston, TX, from on or about May 20, 2011, until on or about November 27, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: January 11, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–1788 Filed 1–26–11; 8:45 am]

BILLING CODE 4710–05–P

STATE DEPARTMENT

[Public Notice: 7240]

Overseas Security Advisory Council (OSAC) Meeting Notice

Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 23 and 24. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: January 18, 2011.

Jeffrey W. Culver,

Director of the Diplomatic Security Service, U.S. Department of State.

[FR Doc. 2011–1783 Filed 1–26–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7238]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Wednesday, February 16, 2011, in the Loy Henderson Conference Room of the U.S. Department of State, 2201 C Street, NW., Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic, Energy, and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on Advancing Entrepreneurship at Home and Abroad. Subcommittee reports and discussions will be led by the Investment Subcommittee, the Economic Sanctions Subcommittee, and the Subcommittee on Women in International Economic Policy.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, February 11, their name, professional affiliation, valid government-issued ID number (*i.e.,* U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*Boothsl@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the entrance on 23rd Street.

In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Sherry Booth prior to Tuesday, February 8th. Requests made after that date will be considered, but might not be possible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Deputy Outreach Coordinator Tiffany Enoch, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–2231 or *EnochT@state.gov.*

Dated: January 21, 2011.

Maryruth Coleman,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2011–1785 Filed 1–26–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Tuesday, February 15, 2011, starting at 1:30 p.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or e-mail for the teleconference call in number.

The proposed agenda for this teleconference is to continue the discussion started during the January 20, 2011, teleconference. This discussion concerns the structure of the COMSTAC working groups and the organization of the COMSTAC meetings themselves.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by February 11, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the February 157, 2011, teleconference. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; e-mail *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, January 21, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–1769 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for a Potomac Yard Metrorail Station in Alexandria, VA

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) as the Federal lead agency, in cooperation with the City of Alexandria, the Washington Metropolitan Area Transit Authority (WMATA), and the National Park Service (NPS), is issuing this Notice of Intent (NOI) to advise the public that it proposes to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts associated with the proposed construction and operation of the Potomac Yard Metrorail Station. The proposed project, described more completely within, would consist of the construction of a Metrorail infill station along the existing combined Blue and Yellow Lines between the Ronald Reagan Washington National Airport Station and the Braddock Road Station. The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, and to invite public participation in the EIS process.

DATES: Comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent before March 15, 2011. *See* **ADDRESSES** below for the address to which written comments may be sent. Scoping meetings to accept comments on the scope of the EIS will be held on the following date:

- *Agency Scoping Meeting:* Thursday, February 10, 2011, Cora Kelly Recreation Center, 25 West Reed Avenue, Alexandria, VA at 3 p.m. Representatives from Federal, State, regional, Tribal, and local agencies that may have an interest in any aspect of the project will be invited to serve as either participating or cooperating agencies.
- *Public Scoping Meetings:* Thursday, February 10, 2011, Cora Kelly Recreation Center, 25 West Reed Avenue, Alexandria, VA at 4:30 p.m. and 6:30 p.m.

The buildings used for the scoping meetings are accessible to persons with disabilities. Spanish language materials and interpreters will be provided at the scoping meetings. Anyone who requires special assistance at a scoping meeting should contact Jim Ashe at WMATA at (202) 962–1745 or *jashe@wmata.com* at least 3 days prior to the meeting. A scoping packet is available on the project Web site at *http://www.potomacyardmetro.com* or by contacting Jim Ashe at the telephone number or e-mail address above. Copies

will also be available at the scoping meetings.

If the City of Alexandria public schools are closed due to inclement weather on February 10, 2011, the public and agency scoping meetings will be held at the same times on the snow date of February 15, 2011.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent on or before March 15, 2011 by e-mail to *comments@potomacyardmetro.com* or by regular mail to Potomac Yard Metrorail Station EIS, P.O. Box 25132, Alexandria, VA 22313.

FOR FURTHER INFORMATION CONTACT: Melissa Barlow, Community Planner, Federal Transit Administration, DC Metro Office, 1990 K Street, NW., Suite 510, Washington, DC 20006, *Melissa.barlow@dot.gov* or (202) 219–3565; or Jim Ashe, Manager, Environmental Planning and Compliance Washington Metropolitan Area Transit Authority, 600 5th Street, NW., Washington, DC 20001, *jashe@wmata.com* or (202) 962–1745.

SUPPLEMENTARY INFORMATION:

Scoping

FTA invites all interested individuals, organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should address (1) feasible alternatives that may better achieve the project's purpose and need with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives.

NEPA "scoping" (Title 40 of the Code of Federal Regulations (CFR) § 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations—"to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives… [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses." Executive Order 11991, of May 24, 1977. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Purpose and Need for the Project

The purpose of the project is to improve accessibility of the Potomac Yard area and provide more transportation choices for current and future residents, employees, and businesses by establishing a new access point to the regional Metrorail system. This additional access point is needed to address existing and future travel demand in the area resulting from the City of Alexandria's planned development of a major transit-oriented mixed-use activity center in the vicinity of the proposed station.

The project area in Alexandria is located in the Northern Virginia portion of the Washington metropolitan region, which is expected to see approximately 30% population growth in the next 30 years. The project area is located adjacent to existing residential neighborhoods to the west and southeast and an approximately 600,000 square-foot retail center. The existing retail center is approved for redevelopment of 2.25 million square feet of mixed-use development including office, retail, residential and hotel uses. Other properties in the Potomac Yard redevelopment area are approved for a total of approximately 4 million square feet of development. This additional development will impact the existing roadway network with increased travel demand adding additional vehicle and transit trips. The transportation network in the project area is limited by the heavy rail to the east and limited east-west connectivity west of Route 1.

Currently the project area is not served by Metrorail or any other rapid transit services which provide regional connectivity. The project area is located between two Metrorail stations located 3.1-miles apart. This gap between the Ronald Reagan Washington National Airport Station and the Braddock Road Station is the longest for the portions of the Metrorail system that serve urban residential and commercial corridors. This area is currently served by local bus services that operate in mixed traffic along the congested US Route 1 corridor, yet they have numerous local stops resulting in slow transit travel speeds. This results in relatively long transit travel times to access the area. The Crystal City-Potomac Yard Transitway, which will provide bus priority lanes on nearby Route 1, will improve reliability of local transit services along the Route 1 corridor however, access to the Metrorail system is still needed to accommodate longer regional transit trips.

The anticipated Potomac Yard Metrorail Station was included in WMATA's 1999 *Transit Service Expansion Plan,* the *2010 Financially Constrained Long-Range Transportation Plan for the National Capital Region,* and earlier WMATA and regional transportation plans, in addition to the City of Alexandria's 1992 and 2008 Transportation Master Plans and *North Potomac Yard Small Area Plan.* Establishing a new access point to the regional Metrorail system would provide more transit-friendly development patterns supported by improved access to transit as well as a safe and reliable alternative to automobile travel to and from the Potomac Yard area. Improved access to the regional system is also needed to accommodate a greater share of travel to and from the area on transit, potentially reducing reliance on single-occupant vehicle use, decreasing automobile emissions, and improving regional air quality. The Washington Metropolitan area has been identified as a non-attainment area for ozone and particulate matter since the concentrations of these pollutants exceed acceptable levels as designated by the EPA.

Possible Alternatives

The alternatives expected to be addressed in the EIS include:

No Action Alternative: The No Action Alternative represents future conditions in the EIS analysis year of 2035 without the Potomac Yard Metrorail Station

Project. The No Action Alternative includes the existing transit and transportation system in the Washington, DC region plus planned improvements for which the need, commitment, financing, and public and political support have been identified, and which may reasonably be expected to be implemented. This alternative is included in the Draft EIS as a means of comparing and evaluating the impacts and benefits of the Potomac Yard Metrorail Station alternatives.

Build Alternatives: Proposed build alternatives are being evaluated for the project. Potomac Yard is located in the City of Alexandria and the southern edge of Arlington, VA. The area is roughly bound by U.S. Route 1 (Jefferson Davis Highway) to the west, the George Washington Memorial Parkway on the east, Four Mile Run to the north, and E. Howell Avenue on the south.

The study corridor where the project would be located is approximately 1.5 miles in length. Build alternatives will be analyzed that are either along or just to the west of the existing WMATA right-of-way for the Blue and Yellow lines in this area. Build alternatives include:

- *Metrorail Station Alternative A:* Station Alternative A would be located along the existing mainline tracks between the George Washington Memorial Parkway and the CSX Railroad tracks and adjacent to the Potomac Greens Neighborhood.
- *Metrorail Station Alternative B1:* Station Alternative B1 would be located along the existing mainline tracks between the George Washington Memorial Parkway and the CSX Railroad, just to the north of Alternative A.
- *Metrorail Station Alternative B2:* Station Alternative B2 would be located along a short segment of realigned track between the George Washington Memorial Parkway and the CSX Railroad, to the north of Alternative A and to the south of Alternative B1.
- *Metrorail Station Alternative B3:* Station Alternative B3 would be located along a short segment of realigned track between the George Washington Memorial Parkway and the CSX Railroad, just to the east of Alternative B2.
- *Metrorail Station Alternative C1:* Station Alternative C1 would be located along realigned Metrorail track between the CSX Railroad and Route 1.
- *Metrorail Station Alternative C2:* Station Alternative C2 would be located along realigned Metrorail track between the CSX Railroad and Route 1, just east of Alternative C1.
- *Metrorail Station Alternative D1:* Station Alternative D1 would be located along realigned Metrorail tracks between the CSX Railroad and Route 1, just east of Alternative C2.
- *Metrorail Station Alternative D2:* Station Alternative D2 would be located along realigned Metrorail tracks between the CSX Railroad and Route 1, just east of Alternative D1.

Possible Effects

FTA will evaluate project-specific as well as indirect and cumulative effects to the existing physical, social, economic, and environmental setting in which the proposed station would be located. The permanent, long-term effects to the region could include, but are not limited to effects to traffic and transportation; land use and socioeconomics; visual character and aesthetics; noise and vibration; historical and archaeological resources; community impacts; natural resources; air quality and climate change; and visual impacts upon the setting of the George Washington Memorial Parkway, a unit of the national park system. Investigation may reveal that the proposed project will not affect or not substantially affect many of these areas. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process for transportation projects. In accordance with Section 6002 of SAFETEA–LU, FTA will: (1) Extend an invitation to other Federal and non-Federal agencies and Native American Tribes that may have an interest in the proposed project to become participating agencies (any interested party that does not receive an invitation to become a participating agency can notify any of the contact persons listed earlier in this NOI); (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for the proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. A Public Involvement Plan and an Agency Coordination Plan will be developed outlining public and agency involvement for the project. These will be available on the project Web site, *http://www.potomacyardmetro.com,* or through written request. Opportunities for comment will be provided throughout the EIS process, including public and agency meetings, the project Web site, a mailing address, and a phone information line. Comments received from any of these sources will be considered in the development of the final scope and content of the environmental documents.

An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American Tribes that may have an interest in the proposed project. It is possible that FTA will not be able to identify all Federal and non-Federal agencies and Native American Tribes that may have such an interest. Any Federal or non-Federal agency or Native American Tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

Summary/Next Steps

With the publication of this NOI, the scoping process for the project begins. After the publication of the Draft Scoping Document, a public comment period will begin, allowing the public to offer input on the scope of the EIS until March 15, 2011. Public comments will be received through those methods explained earlier in this NOI and will be incorporated into the Annotated Outline. This document will detail the scope of the EIS and the potential environmental effects that will be considered during the study period. After the completion of the Draft EIS, a public hearing and another public commenting period will allow for input on the EIS, and these comments will be incorporated into the Final EIS report before publication.

Paperwork Reduction

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably at the conclusion of scoping), FTA and its grantees will distribute only the executive summary of the environmental document together

with a Compact Disc of the complete environmental document. A complete printed set of the environmental document will be available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document will also be available on the project Web site, *http://www.potomacyardmetro.com.*

Other

The City of Alexandria is pursuing USDOT Discretionary Capital Grant funding for the project. The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR part 771). Related environmental procedures to be addressed during the NEPA process include, but are not limited to, Executive Order 12898 on Environmental Justice; Section 106 of the National Historic Preservation Act; and Section 4(f) of the DOT Act (49 U.S.C. 303).

Issued on: January 20, 2011.

Letitia A. Thompson,

Regional Administrator, Federal Transit Administration Region III, Philadelphia, Pennsylvania.

[FR Doc. 2011–1761 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Suzuki

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the American Suzuki Motor Corporation's (Suzuki) petition for an exemption of the Kizashi vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard.*

DATES: The exemption granted by this notice is effective beginning with the 2012 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated October 22, 2010, Suzuki requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the MY 2012 Suzuki Kizashi vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line. The agency informed Suzuki by telephone on November 29, 2010, of the areas of insufficiency with respect to its October 22, 2010 petition for exemption. On December 10, 2010, Suzuki submitted supplementary information to the agency addressing its areas of insufficiency.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year. In its petition, Suzuki provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Kazashi vehicle line. Suzuki will install its passive antitheft device as standard equipment on the line. Key features of the antitheft device will include an electronically coded key fob, Body Control Module (BCM), Engine Control Module (ECM) and a passive immobilizer. Suzuki's submission, along with its supplementary information is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Suzuki stated that the proposed device is designed to be active at all times without direct intervention by the vehicle operator and is fully armed immediately after the ignition has been turned off and the key is removed. The device will provide protection against unauthorized starting and fueling of the engine. Suzuki further stated that the device will also incorporate an audible and visible alarm feature as standard equipment. The lights will flash and the horn will sound in the event of unauthorized vehicle entry.

Suzuki stated that the antitheft device will also utilize a special ignition key and decoder module. Before the vehicle can be operated, the coded key fob must be confirmed to authorize start and fuel of the engine. Specifically, Suzuki stated that the BCM sends a signal and an electronically-coded identification number to the key fob. If the correct key fob is used, it conducts a calculation and sends the result to the BCM. The BCM also conducts its own calculation and verifies that the BCM and key fob calculation result are identical. If the results are identical, the BCM will send data to the ECM allowing the vehicle to start. If either the key fob identification number or calculation result are not an exact match with the BCM information, Suzuki stated that the ECM will prohibit operation of the vehicle.

In addressing the specific content requirements of 543.6, Suzuki provided information on the reliability and durability of the proposed device. To ensure reliability and durability of the device, Suzuki conducted tests based on its own specified standards. Suzuki provided a detailed list of the tests conducted on the components of its immobilizer device and believes that the device is reliable and durable since it complied with the specified requirements for each test. According to the information provided by Suzuki, the components of the device were tested and the results confirm that the device performed as designed, meeting compliance in climatic, chemical environments, and immunity to various electromagnetic radiations.

Suzuki stated that although there is no theft data available to show the theft reduction benefits for the Kizashi vehicle line at this time, it has compared the effectiveness of its antitheft device with devices which it believes are functionally and operationally similar to its proposed device. Suzuki stated that data published by the agency, the Highway Loss data Institute and the National Insurance Crime Bureau show the effectiveness of passive immobilizer devices at reducing and deterring theft. Suzuki stated that the agency's theft data show that the theft rate for the 1999 Nissan Maxima equipped with a standard passive immobilizer is 2.5 thefts per thousand vehicles, compared to a theft rate of 5.2 thefts for the 1998 Nissan Maxima without a passive immobilizer, a reduction of more than 50 percent. Additionally, Suzuki noted that data from the Highway Loss Data Institute show that overall theft losses for the 1999 Nissan Maxima (with a passive immobilizer) were reduced by over 85 percent compared to the overall losses for the 1998 Nissan Maxima (without a passive immobilizer). Suzuki provided further information showing

that data from the National Insurance Crime Bureau showed a 70 percent reduction in theft when comparing MY 1997 Ford Mustang vehicles (with a standard immobilizer) to MY 1995 Ford Mustang vehicles (without and immobilizer). Suzuki believes that its antitheft device will be no less effective than these devices and similar devices for which NHTSA has already granted exemptions from the parts-marking requirements.

Based on the supporting evidence submitted by Suzuki on the device, the agency believes that the antitheft device for the Kizashi vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Suzuki has provided adequate reasons for its belief that the antitheft device for the MBUSA new vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information MBUSA provided about its device.

For the foregoing reasons, the agency hereby grants in full Suzuki's petition for exemption for the Kizashi vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Suzuki decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Suzuki wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: January 21, 2011.

Joseph S. Carra,

Acting, Associate Administrator for Rulemaking.

[FR Doc. 2011–1772 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection: Activity Under OMB Review: Report of Financial and Operating Statistics for Large Certificated Air Carriers

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial data from large certificated air carriers. Large certificated air carriers are carriers that operate aircraft with 60 seats or more, aircraft with 18,000 pounds of payload capacity or more, or operate international air services.

DATES: Written comments should be submitted by March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

Comments: Comments should identify the associated OMB approval # 2138–0013 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0013, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0013

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Form No.: BTS Form 41.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 76.

Estimated Time per Response: 4 hours per schedule, an average carrier may submit 90 schedules in one year.

Total Annual Burden: 28,000 hours.

Needs and Uses: Program uses for Form 41 data are as follows:

Mail Rates

The Department of Transportation sets and updates the international and mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the

established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Submission of U.S. Carrier Data to ICAO

As a party to the Convention on International Civil Aviation, the United States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on January 20, 2011.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. 2011–1746 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small certificated and commuter air carriers. Small certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) currently must file the two quarterly schedules listed below:

F–1 *Report of Financial Data,*

F–2 *Report of Aircraft Operating Expenses and Related Statistics,* and

Commuter air carriers must file the Schedule F–1 *Report of Financial Data*

Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility, and clarity of the information collected.

DATES: Written comments should be submitted by March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

Comments: Comments should identify the associated OMB approval #2138–0009 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0009, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0009

Title: Report of Financial and Operating Statistics for Small Aircraft Operators.

Form No.: BTS Form 298–C.

Type of Review: Extension of a currently approved collection for the financial data.

Respondents: Small certificated and commuter air carriers.

Number of Respondents: 80.

Estimated Time per Response: 4 hours per commuter carrier; 12 hours per small certificated carrier.

Total Annual Burden: 2,560 hours.

Needs and Uses: Program uses for Form 298–C financial data are as follows:

Mail Rates

The Department of Transportation sets and updates the Intra-Alaska Bush mail rates based on carrier aircraft operating expense, traffic, and operational data. Form 298–C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Essential Air Service

DOT often has to select a carrier to provide a community's essential air service. The selection criteria include historic presence in the community, reliability of service, financial stability and cost structure of the air carrier.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of

an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 298–C for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of Title 49 of the United States Code requires DOT to find all commuter and small certificated air carriers fit, willing, and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier begins conducting flight operations, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers prepared for senior DOT officials may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued on January 20, 2011.

Anne Suissa,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2011–1747 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number RITA 2008–0002]

Agency Information Collection: Activity Under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers to file traffic and capacity data pursuant to 14 CFR 241.19 and part 217, respectively. These reports are used to measure air transportation activity to, from, and within the United States.

DATES: Written comments should be submitted by March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov*.

Comments: Comments should identify the associated OMB approval #2138–0040 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0040, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0040

Title: Report of Traffic and Capacity Statistics—The T–100 System.

Form No.: Schedules T–100 and T–100(f).

Type of Review: Extension of a currently approved collection.

Respondents: Certificated, commuter and foreign air carriers that operate to, from or within the United States.

Number of Respondents: 250.

Number of Annual responses: 3,000.

Total Burden per Response: 6 hours.

Total Annual Burden: 18,000 hours.

Needs and Uses:

Airport Improvement

The Federal Aviation Administration uses enplanement data for U.S. airports to distribute the annual Airport Improvement Program (AIP) entitlement funds to eligible primary airports, *i.e.,* airports which account for more than 0.01 percent of the total passengers enplaned at U.S. airports. Enplanement data contained in Schedule T–100/T–100(f) are the sole data base used by the FAA in determining airport funding. U.S. airports receiving significant service from foreign air carriers operating small aircraft could be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to more fairly distribute these funds.

Air Carrier Safety

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts that are used in developing its budget and staffing plans, facility and equipment funding levels, and environmental impact and policy studies. The FAA monitor changes in the number of air carrier operations as a way to allocate inspection resources and in making decisions as to increased safety surveillance. Similarly, airport activity statistics are used by the FAA to develop airport profiles and establish priorities for airport inspections.

Acquisitions and Mergers

While the Justice Department has the primary responsibility over air carrier acquisitions and mergers, the Department reviews the transfer of international routes involved to determine if they would substantially reduce competition, or determine if the transaction would be inconsistent with the public interest. In making these determinations, the proposed transaction's effect on competition in the markets served by the affected air carriers is analyzed. This analysis includes, among other thinks, a consideration of the volume of traffic and available capacity, the flight segments and origins-destinations involved, and the existence of entry barriers, such as limited airport slots or gate capacity. Also included is a review of the volume of traffic handled by each air carrier at specific airports and in specific markets which would be affected by the proposed acquisition or merger. The Justice Department uses T–100 data in carrying out its responsibilities relating to airline competition and consolidation.

Traffic Forecasting

The FAA uses traffic, operational and capacity data as important safety

indicators and to prepare the air carrier traffic and operation forecasts. These forecast as used by the FAA, airport managers, the airlines and others in the air travel industry as planning and budgeting tools.

Airport Capacity Analysis

The mix of aircraft type are used in determining the practical annual capacity (PANCAP) at airports as prescribed in the FAA Advisory Circular *Airport Capacity Criteria Used in Preparing the National Airport Plan.* The PANCAP is a safety-related measure of the annual airport capacity or level of operations. It is a predictive measure which indicates potential capacity problems, delays, and possible airport expansions or runway construction needs. If the level of operations at an airport exceeds PANCAP significantly, the frequency and length of delays will increase, with a potential concurrent risk of accidents. Under this program, the FAA develops ways of increasing airport capacity at congested airports.

Airline Industry Status Evaluations

The Department apprizes Congress, the Administration and others of the effect major changes or innovations are having on the air transportation industry. For this purpose, summary traffic and capacity data as well as the detailed segment and market data are essential. These data must be timely and inclusive to be relevant for analyzing emerging issues and must be based upon uniform and reliable data submissions that are consistent with the Department's regulatory requirements.

Mail Rates

The Department is responsible for establishing international and intra-Alaska mail rates. International mail rates are set based on scheduled operations in four geographic areas: Trans-border, Latin America, operations over the Atlantic Ocean and operations over the Pacific Ocean. Separate rates are set for mainline and bush Alaskan operations. The rates are updated every six months to reflect changes in unit costs in each rate-making entity. Traffic and capacity data are used in conjunction with cost data to develop the required unit cost data.

Essential Air Service

The Department reassesses service levels at small domestic communities to assure that capacity levels are adequate to accommodate current demand.

System Planning at Airports

The FAA is charged with administering a series of grants that are designed to accomplish the necessary airport planning for future development and growth. These grants are made to state metropolitan and regional aviation authorities to fund needed airport systems planning work. Individual airport activity statistics, nonstop market data, and service segment data are used to prepare airport activity level forecasts.

Review of IATA Agreements

The Department reviews all of the International Air Transport Association (IATA) agreements that relate to fares, rates, and rules for international air transportation to ensure that the agreements meet the public interest criteria. Current and historic summary traffic and capacity data, such as revenue ton-miles and available ton-miles, by aircraft type, type of service, and length of haul are needed to conduct these analyses to: (1) Develop the volume elements for passenger/cargo cost allocations, (2) evaluate fluctuations in volume of scheduled and charter services, (3) assess the competitive impact of different operations such as charter versus scheduled, (4) calculate load factors by aircraft type, and (5) monitor traffic in specific markets.

Foreign Air Carriers Applications

Foreign air carriers are required to submit applications for authority to operate to the United States. In reviewing these applications the Department must find that the requested authority is encompassed in a bilateral agreement, other intergovernmental understanding, or that granting the application is in the public interest. In the latter cases, T–100 data are used in assessing the level of benefits that carriers of the applicant's homeland presently are receiving from their U.S. operations. These benefits are compared and balanced against the benefits U.S. carriers receive from their operations to the applicant's homeland.

Air Carrier Fitness

The Department determines whether U.S. air carriers are and continue to be fit, willing and able to conduct air service operations without undue risk to passengers and shippers. The Department monitors a carrier's load factor, operational, and enplanement data to compare with other carriers with similar operating characteristics. Carriers that expand operations are a high rate are monitored more closely for safety reasons.

International Civil Aviation Organization

Pursuant to an international agreement, the United States is obligated to report certain air carrier data to the International Civil Aviation Organization (ICAO). The traffic data supplied to ICAO are extracted from the U.S. air carriers' Schedule T–100 submissions.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Dated: Issued on January 20, 2011.

Anne Suissa,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2011–1748 Filed 1–26–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Privacy Act of 1974, as Amended, System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of an amended Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Departmental Offices, gives notice of an amended Privacy Act system of records.

DATES: *Effective Date:* January 27, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2510 (not a toll free number), or Chief Counsel (Foreign Assets Control), Office of General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2410 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice on October 6, 2010, at 75 FR 61853 consolidating three of its system

of records (Treasury/DO .111, DO .114 and DO .118) into Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions. The system of records manages records related to the implementation, enforcement, and administration of U.S. economic sanctions. No comments pertaining to the notice consolidating the three Office of Foreign Assets Control systems of records were received.

On October 13, 2010, the Department published a proposed rule at 75 FR 62737 to add an exemption from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) for certain records maintained in the system of records entitled "Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions." No comments were received with respect to the proposed rule. Accordingly, the Department is altering its system of records notice published on October 6, 2010, to add the exemption permitted by 5 U.S.C. 522a(k)(1).

The Department is also publishing separately in the **Federal Register** a final rule amending 31 CFR 1.26(g)(6)(ii)(A) and 1.36(e), (f) to add the system of records for which an exemption has been claimed pursuant to 5 U.S.C. 552a(k)(1).

The alteration to the system of records entitled "Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" is set forth below.

Dated: January 7, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/DO .120

SYSTEM NAME:

Records Related to Office of Foreign Assets Control Economic Sanctions.

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Description of change: Remove the current entry and in its place add the following:

"Records in this system related to enforcement, designation, blocking, and other investigations are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). See 31 CFR 1.36."

* * * * *

[FR Doc. 2011–1774 Filed 1–26–11; 8:45 am]

BILLING CODE 4811–45–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 18 January 27, 2011

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412
Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1346–P]

RIN 0938–AQ23

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012)

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs) for discharges occurring during the rate year beginning July 1, 2011 through September 30, 2012. The proposed rule would also change the IPF prospective payment system (PPS) payment rate update period to a rate year (RY) that coincides with a fiscal year (FY). In addition, the rule proposes policy changes affecting the IPF PPS teaching adjustment. It would also rebase and revise the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket, and make some clarifications and corrections to terminology and regulations text.

DATES: To be assured consideration, comments must be received at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m. EST on March 22, 2011.

ADDRESSES: In commenting, please refer to file code CMS–1346–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1346–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1346–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *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 either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dorothy Myrick or Jana Lindquist, (410) 786–4533 (for general information). Mary Carol Barron, (410) 786–7943, or Bridget Dickensheets, (410) 786–8670, (for information regarding the market basket and labor-related share). Theresa Bean, (410) 786–2287 (for information regarding the regulatory impact analysis).

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Acronyms

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

BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113)
CBSA Core-Based Statistical Area
CCR Cost-to-charge ratio
CAH Critical access hospital
DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision
DRGs Diagnosis-related groups
FY Federal fiscal year (October 1 through September 30)
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
IPFs Inpatient psychiatric facilities
IRFs Inpatient rehabilitation facilities
LTCHs Long-term care hospitals
MedPAR Medicare provider analysis and review file
RPL Rehabilitation, Psychiatric, and Long-Term Care
RY Rate Year (July 1 through June 30)
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248)

I. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the inpatient psychiatric facilities (IPF) prospective payment system (PPS) in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and recalculate the Federal per diem base rate and the patient- and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041). We are proposing to change the payment rate update period to a RY that coincides with a FY. If we finalize this proposal, future update notices would be published in the **Federal Register** in the summer. See section II. of this proposed rule.

Updates to the IPF PPS as specified in 42 CFR 412.428 include the following:

- A description of the methodology and data used to calculate the updated Federal per diem base payment amount.
- The rate of increase factor as described in § 412.424(a)(2)(iii), which is based on the Excluded Hospital With Capital market basket under the update methodology of section 1886(b)(3)(B)(ii) of the Social Security Act (the Act) for each year (effective from the implementation period until June 30, 2006).
- For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the IPF's payment, which is based on the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket.
- The best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.
- Updates to the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- Description of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) coding and diagnosis-related groups (DRGs) classification changes discussed in the annual update to the hospital inpatient prospective payment system (IPPS) regulations.
- Update to the electroconvulsive therapy (ECT) payment by a factor specified by CMS.
- Update to the national urban and rural cost-to-charge ratio medians and ceilings.
- Update to the cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.

Our most recent IPF PPS annual update occurred in the April 30, 2010 **Federal Register** notice (75 FR 23106) (hereinafter referred to as the April 2010 IPF PPS notice) that set forth updates to the IPF PPS payment rates for RY 2011. This notice updated the IPF PPS per diem payment rates that were published in the May 2009 IPF PPS notice in accordance with our established policies.

Since implementation of the IPF PPS, we have explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Now that we are approximately 5 years into the system, we believe that we have enough data to begin that process. Therefore, we have begun the necessary

analysis in order to make future refinements. While we are not proposing to make refinements in this rulemaking, as explained in section V.D.3 below, we believe that in the next rulemaking, for RY 2013, we will be ready to propose potential refinements.

B. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999, (Pub. L. 106–113) (BBRA) required implementation of the IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units that includes an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

To implement these provisions, we published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS Web sites *http://www.cms.hhs.gov/InpatientPsychFacilPPS/* and *http://www.cms.hhs.gov/InpatientpsychfacilPPS/02_regulations.asp*.

Section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to as ''The Affordable Care Act'') added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) is titled ''Reference to Establishment and Implementation of System'' and it refers to section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in § 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the rate year beginning in 2012 and each subsequent rate year. Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for rate years beginning in 2010 through the rate year beginning in 2019. For the rate year beginning in 2011, the reduction is 0.25 percentage point. We are proposing to implement that provision for RY 2012 in this proposed rule.

Section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014.

C. IPF PPS–General Overview

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as authorized under section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem Federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and it provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) Medicare program.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget neutrality.

The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect higher per diem costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost of living adjustment for IPFs located in Alaska and Hawaii, and presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: outlier cases; stop-loss protection (which was applicable only during the IPF PPS transition period); interrupted stays; and a per treatment adjustment for patients who undergo ECT.

A complete discussion of the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of BBRA does not specify an annual update rate strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final Federal per diem base rate to be budget neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

D. Transition Period for Implementation of the IPF PPS

In the November 2004 IPF PPS final rule, we provided for a 3-year transition period. During this 3-year transition period, an IPF's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decreasing percentage of the IPF PPS payment that is based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after January 1, 2008, IPF PPS payments are based on 100 percent of the Federal rate.

II. Proposal To Revise the IPF PPS Payment Rate Update Period From a Rate Year to a Fiscal Year

In this proposed rule, we are proposing a change to the current period for the annual updates of the IPF PPS Federal payment rates. We propose to revise the IPF PPS payment rate update period by switching from a RY that begins on July 1 and goes through June 30 to a period that coincides with a fiscal year (FY), that is, October 1 through September 30. We would also refer to the update period as a FY beginning with the update period that begins in 2012, that is, FY 2013. This change in the annual update period would allow us to consolidate Medicare publications by aligning the IPF PPS update with the annual update of the ICD–9–CM codes, which are effective on October 1 of each year. Currently, in addition to our annual proposed and final rulemaking documents, we publish a change request transmittal every August updating the ICD–9–CM codes related to the DRG and comorbidity adjustments. By aligning the IPF PPS

with the same update period as the ICD–9–CM codes, we will eliminate the need to publish a transmittal off-cycle.

We maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing the psychiatric care. When the IPF PPS was implemented, we adopted the same diagnostic code set and DRG patient classification systems (that is, the CMS DRGs) that were utilized at the time under the hospital IPPS. Every year, changes to the ICD–9–CM coding system are addressed in the IPPS proposed and final rules. These changes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update. This proposed change to the annual payment rate update period would allow the annual update to the rates and the ICD–9–CM coding update to occur on the same schedule and appear in the same **Federal Register** document.

Our intent in making the change in the payment rate update schedule is to place the IPF PPS on the same update cycle as other PPSs, making it administratively efficient. In order to smoothly transition to a payment update period that runs from October 1 through September 30, we propose that the RY 2012 period run from July 1, 2011 to September 30, 2012 such that RY 2012 would be 15 months. Under this proposal, after RY 2012, the rate update period for the IPF PPS payment rates and other policy changes would begin on October 1 and go through September 30. The next update to the IPF PPS rates after RY 2012 would be the FY 2013 update cycle, which would begin on October 1, 2012 and go through September 30, 2013. In addition, we are proposing to make a change to the regulations at § 412.402 to add the term ''IPF Prospective Payment System Rate Year'' which would mean October 1 through September 30. We are proposing that the RY would be referred to as a FY. The discussion of the proposed 15-month market basket update for the proposed 2012 rate year can be found in section III.C.5. of this proposed rule.

III. Proposed Rebasing and Revising of the Rehabilitation, Psychiatric, and Long-Term Care (RPL) Market Basket for Inpatient Psychiatric Facilities

A. Background

The input price index (that is, the market basket) that was used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost report data and included data for Medicare participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term ''market basket'' as used in this document refers to a hospital input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a FY 2002-based market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket).

We excluded cancer and children's hospitals from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which are implemented in regulations at § 413.40. They are not reimbursed through a PPS. Also, the FY 2002 cost structures for cancer and children's hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs. A complete discussion of the FY 2002-based RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

In the May 1, 2009 IPF PPS notice (74 FR 20362), we expressed our interest in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. We note that, of the available options, one would be to join the Medicare cost report data from freestanding IPF providers (presently incorporated into the FY 2002-based RPL market basket) with data from hospital-based IPF providers. We indicated that an examination of the Medicare cost report data comparing freestanding and hospital-based IPFs revealed considerable differences between the two with respect to cost levels and cost structures. At that time, we were unable to fully understand the differences between these two types of IPF providers. As a result, we felt that further research was required and we solicited public comment for additional information that might help us to better understand the reasons for the variations in costs and cost structures, as indicated by the cost report data, between freestanding and hospital-based IPFs (74 FR 20376).

We summarized the public comments we received and our responses in the April 2010 IPF PPS notice (75 FR 23111 through 23113). Despite receiving comments from the public on this issue, we remain unable to sufficiently understand the observed differences in costs and cost structures between hospital-based and freestanding IPFs, and therefore we do not feel it is appropriate at this time to incorporate data from hospital-based IPFs with those of freestanding IPFs to create a stand-alone IPF market basket.

Although we do not feel it would be appropriate to propose a stand-alone IPF market basket, we are currently exploring the viability of creating two separate market baskets from the current RPL, one of which would include freestanding IPFs and freestanding IRFs and would be used to update payments under both the IPF and IRF payment systems. The other would be a stand-alone LTCH market basket. Depending on the outcome of our research, we anticipate the possibility of proposing a rehabilitation and psychiatric (RP) market basket in the next update cycle. We welcome public comment on the possibility of using this type of market basket to update IPF payments in the future.

For this update cycle, we are proposing to rebase and revise the FY 2002-based RPL market basket by creating a proposed FY 2008-based RPL market basket as described below. In the following discussion, we provide an overview of the market basket and describe the methodologies we propose to use for purposes of determining the operating and capital portions of the proposed FY 2008-based RPL market basket.

B. Overview of the Proposed FY 2008–Based RPL Market Basket

The proposed FY 2008-based RPL market basket is a fixed weight, Laspeyres-type price index. A Laspeyres price index measures the change in price, over time, of the same mix of goods and services purchased in the base period. Any changes in the quantity or mix of goods and services (that is, intensity) purchased over time are not measured.

The index itself is constructed in three steps. First, a base period is selected (in this proposed rule, the base period is FY 2008) and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories with the proportion of total costs that each category

represents being calculated. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. In nearly every instance, these price proxies are derived from publicly available statistical series that are published on a consistent schedule (preferably at least on a quarterly basis). Finally, the expenditure weight for each cost category is multiplied by the level of its respective price proxy. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that timeframe.

As noted above, the market basket is described as a fixed-weight index because it represents the change in price over time of a constant mix (quantity and intensity) of goods and services needed to furnish hospital services. The effects on total expenditures resulting from changes in the mix of goods and services purchased subsequent to the base period are not measured. For example, a hospital hiring more nurses to accommodate the needs of patients would increase the volume of goods and services purchased by the hospital, but would not be factored into the price change measured by a fixed-weight hospital market basket. Only when the index is rebased would changes in the quantity and intensity be captured, with those changes being reflected in the cost weights. Therefore, we rebase the market basket periodically so the cost weights reflect recent changes in the mix of goods and services that hospitals purchase (hospital inputs) to furnish inpatient care between base periods.

C. Proposed Rebasing and Revising of the RPL Market Basket

We are inviting public comments on our proposed methodological changes to the RPL market basket. The terms ''rebasing'' and ''revising,'' while often used interchangeably, actually denote different activities. ''Rebasing'' means moving the base year for the structure of costs of an input price index (for example, in this proposed rule, we are proposing to shift the base year cost structure for the RPL market basket from FY 2002 to FY 2008). ''Revising'' means changing data sources, price proxies, or methods, used to derive the input price index. We propose to rebase and revise the market basket used to update the IPF PPS.

1. Development of Cost Categories and Weights

a. Medicare Cost Reports

The proposed FY 2008-based RPL market basket consists of several major cost categories derived from the FY 2008 Medicare cost reports for freestanding IRFs, freestanding IPFs, and LTCHs including wages and salaries, pharmaceuticals, professional liability insurance, capital, and a residual. These FY 2008 cost reports include providers whose cost report begin date is on or between October 1, 2007 and September 30, 2008. We choose to use FY 2008 as the base year because we believe that the Medicare cost reports for this year represent the most recent, complete set of Medicare cost report data available for IRFs, IPFs, and LTCHs. However, there is an issue with obtaining data specifically for benefits and contract labor from this set of FY 2008 Medicare cost reports since IRFs, IPFs, and LTCHs were not required to complete the Medicare cost report worksheet from which these data were collected (Worksheet S–3, part II). As a result, only a small number of providers (less than 30 percent) reported data for these categories, and we do not expect these FY 2008 data to improve over time. Furthermore, since IRFs, IPFs, and LTCHs were not required to submit data for Worksheet S–3, part II in previous cost reporting years, we have always had this issue of incomplete Medicare cost report data for benefits and contract labor (including when we finalized the FY 2002-based RPL market basket). Due to the incomplete benefits and contract labor data for IRFs, IPFs, and LTCHs, we propose to develop these cost weights using FY 2008 Medicare cost report data for IPPS hospitals (similar to the method that was used for the FY 2002-based RPL market basket). Additional detail is provided later in this section.

Since our goal is to measure cost shares that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries, we are proposing to limit our selection of Medicare cost reports to those from hospitals that have a Medicare average length of stay (LOS) that is within a comparable range of their total facility average LOS. We believe this provides a more accurate reflection of the structure of costs for Medicare covered days. We propose to use the cost reports of IRFs and LTCHs with Medicare average LOS within 15 percent (that is, 15 percent higher or lower) of the total facility average LOS for the hospital. This is the same edit applied to derive the FY 2002-based RPL market basket and generally includes those LTCHs and IRFs with Medicare LOS within approximately 5 days of the facility average LOS of the hospital.

We are proposing to use a less stringent measure of Medicare LOS for IPFs. For this provider-type, and in order to produce a robust sample size, we propose to use those facilities' Medicare cost reports whose average LOS is within 30 or 50 percent (depending on the total facility average LOS) of the total facility average LOS. This is the same edit applied to derive the FY 2002-based RPL market basket.

We applied these LOS edits to first obtain a set of cost reports for facilities that have a Medicare LOS within a comparable range of their total facility LOS. Using this set of Medicare cost reports, we then calculated cost weights for four cost categories directly from the FY 2008 Medicare cost reports for freestanding IRFs, freestanding IPFs, and LTCHs (found in Table 1 below). These Medicare cost report cost weights were then supplemented with information obtained from other data sources (explained in more detail below) to derive the proposed FY 2008-based RPL market basket cost weights.

TABLE 1—MAJOR COST CATEGORIES AND THEIR RESPECTIVE COST WEIGHTS AS CALCULATED DIRECTLY FROM FY 2008 MEDICARE COST REPORTS

Major cost categories	Proposed FY 2008-based RPL market basket (percent)
Wages and salaries	47.371
Professional liability insurance (Malpractice)	0.764
Pharmaceuticals	6.514
Capital	8.392
All other	36.959

b. Other Data Sources

In addition to the IRF, IPF and LTCH Medicare cost reports for freestanding IRFs and freestanding IPFs, and LTCHs, the other data sources we used to develop the proposed FY 2008-based RPL market basket cost weights were the FY 2008 IPPS Medicare cost reports and the Benchmark Input-Output (I–O) Tables created by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The FY 2008 Medicare cost reports include providers whose cost report begin date is on or

between October 1st, 2007 and September 30, 2008.

As noted above, the proposed FY 2008-based RPL cost weights for benefits and contract labor were derived using FY 2008-based IPPS Medicare cost reports. We used these Medicare cost reports to calculate cost weights for Wages and Salaries, Benefits, and Contract Labor for IPPS hospitals for FY 2008. For the proposed Benefits cost weight for the FY 2008-based RPL market basket, the ratio of the FY 2008 IPPS Benefits cost weight to the FY 2008 IPPS Wages and Salaries cost weight was applied to the RPL Wages and Salaries cost weight. Similarly, the ratio of the FY 2008 IPPS Contract Labor cost weight to the FY 2008 IPPS Wages and Salaries cost weight was applied to the RPL Wages and Salaries cost weight to derive a Contract Labor cost weight for the proposed FY 2008-based RPL market basket.

The All Other cost category is divided into other hospital expenditure category shares using the 2002 BEA Benchmark I–O data following the removal of the portions of the All Other cost category provided in Table 1 that are attributable to Benefits and Contract Labor. The BEA Benchmark I–O data are scheduled for publication every 5 years. The most recent data available are for 2002. BEA also produces Annual I–O estimates; however, the 2002 Benchmark I–O data represent a much more comprehensive and complete set of data that are derived from the 2002 Economic Census. The Annual I–O is simply an update of the Benchmark I–O tables. For the FY 2002-based RPL market basket, we used the 1997 Benchmark I–O data. We are proposing to use the 2002 Benchmark I–O data in the FY 2008-based RPL market basket. Instead of using the less detailed Annual I–O data, we aged the 2002 Benchmark I–O data forward to 2008. The methodology we used to age the data forward involves applying the annual price changes from the respective price proxies to the appropriate cost categories. We repeat this practice for each year.

The All Other cost category expenditure shares are determined as being equal to each category's proportion to total ''all other'' in the aged 2002 Benchmark I–O data. For instance, if the cost for telephone services represented 10 percent of the sum of the ''all other'' Benchmark I–O hospital expenditures, then telephone services would represent 10 percent of the RPL market basket's All Other cost category.

2. Final Cost Category Computation

As stated previously, for this rebasing we are proposing to use the FY 2008 Medicare cost reports for IRFs, IPFs, and LTCHs to derive four major cost categories. The proposed FY 2008-based RPL market basket includes two additional cost categories that were not broken out separately in the FY 2002-based RPL market basket: ''Administrative and Business Support Services'' and ''Financial Services''. The inclusion of these two additional cost categories, which are derived using the Benchmark I–O data, is consistent with the addition of these two cost categories to the FY 2006-based IPPS market basket (74 FR 43845). We are proposing to break out both categories so we can better match their respective expenses with more appropriate price proxies. A thorough discussion of our rationale for each of these cost categories is provided in the section III.C.3.s. of this proposed rule. Also, the proposed FY 2008-based RPL market basket excludes one cost category: Photo Supplies. The 2002 Benchmark I–O weight for this category is considerably smaller than the 1997 Benchmark I–O weight, presently accounting for less than one-tenth of one percentage point of the RPL market basket. Therefore, we are proposing to include the photo supplies costs in the Chemical cost category weight with other similar chemical products.

We are not proposing to change our definition of the labor-related share. However, we are proposing to rename our aggregate cost categories from ''labor-intensive'' and ''nonlabor-intensive'' services to ''labor-related'' and ''nonlabor-related'' services. This is consistent with the FY 2006-based IPPS market basket (74 FR 43845). As discussed in more detail below and similar to the FY 2002-based RPL market basket, we classify a cost category as labor-related and include it in the labor-related share if the cost category is defined as being labor-intensive and its cost varies with the local labor market. In previous regulations, we grouped cost categories that met both of these criteria into labor-intensive services. We believe the proposed new labels more accurately reflect the concepts that they are intended to convey. We are not proposing to change our definition of the labor-related share because we continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

3. Selection of Price Proxies

After computing the FY 2008 cost weights for the proposed rebased RPL market basket, it was necessary to select appropriate wage and price proxies to reflect the rate of price change for each expenditure category. With the exception of the proxy for Professional Liability Insurance, all of the proxies for the operating portion of the proposed FY 2008-based RPL market basket are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in markets other than the retail market. PPIs are preferable price proxies for goods and services that hospitals purchase as inputs because these PPIs better reflect the actual price changes faced by hospitals. For example, we use a special PPI for prescription drugs, rather than the Consumer Price Index (CPI) for prescription drugs, because hospitals generally purchase drugs directly from a wholesaler. The PPIs that we use measure price changes at the final stage of production.

Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by a producer, we used CPIs only if an appropriate PPI was not available, or if the expenditures were more similar to those faced by retail consumers in general rather than by purchasers of goods at the wholesale level. For example, the CPI for food purchased away from home is used as a proxy for contracted food services.

Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. Appropriately, they are not affected by shifts in employment mix.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Timeliness implies that the proxy is published regularly, preferably at least once a quarter. Availability means that the proxy is publicly available. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The

proposed CPIs, PPIs, and ECIs selected meet these criteria.

Table 2 sets forth the proposed FY 2008-based RPL market basket including cost categories, and their respective weights and price proxies. For comparison purposes, the corresponding FY 2002-based RPL market basket cost weights are listed, as well. For example, Wages and Salaries are 49.447 percent of total costs in the proposed FY 2008-based RPL market basket compared to 52.895 percent for the FY 2002-based RPL market basket. Employee Benefits are 12.831 percent in the proposed FY 2008-based RPL market basket compared to 12.982 percent for the FY 2002-based RPL market basket. As a result, compensation costs (Wages and Salaries plus Employee Benefits) for the proposed FY 2008-based RPL market basket are 62.278 percent of total costs compared to 65.877 percent for the FY 2002-based RPL market basket.

Following Table 2 is a summary outlining the choice of the proxies we propose to use for the operating portion of the FY 2008-based RPL market basket. The price proxies proposed for the capital portion are described in more detail in the capital methodology section (*see* section III.C.4. of this proposed rule).

We note that the proxies for the operating portion of the FY 2008-based RPL market basket are the same as those used for the FY 2006-based IPPS operating market basket. Because these proxies meet our criteria of reliability, timeliness, availability, and relevance, we believe they are the best measures of price changes for the cost categories. For further discussion on the FY 2006-based IPPS market basket, see the IPPS final rule published in the **Federal Register** on August 27, 2009 (74 FR 43843).

TABLE 2—PROPOSED FY 2008-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES WITH FY 2002-BASED RPL MARKET BASKET COST WEIGHTS INCLUDED FOR COMPARISON

Cost categories	FY 2002-based RPL market basket cost weights	Proposed FY 2008-based RPL market basket cost weights	Proposed FY 2008-based RPL market basket price proxies
1. Compensation	65.877	62.278	
A. Wages and Salaries [1]	52.895	49.447	ECI for Wages and Salaries, Civilian Hospital Workers.
B. Employee Benefits [1]	12.982	12.831	ECI for Benefits, Civilian Hospital Workers.
2. Utilities	0.656	1.578	
A. Electricity	0.351	1.125	PPI for Commercial Electric Power.
B. Fuel, Oil, and Gasoline	0.108	0.371	PPI for Petroleum Refineries.
C. Water and Sewage	0.197	0.082	CPI–U for Water & Sewerage Maintenance.
3. Professional Liability Insurance	1.161	0.764	CMS Hospital Professional Liability Insurance Premium Index.
4. All Other Products and Services	22.158	26.988	
A. All Other Products	13.325	15.574	
(1.) Pharmaceuticals	5.103	6.514	PPI for Pharmaceutical Preparations for Human Use (Prescriptions).
(2.) Food: Direct Purchases	0.873	2.959	PPI for Processed Foods & Feeds.
(3.) Food: Contract Services	0.620	0.392	CPI–U for Food Away From Home.
(4.) Chemicals [2]	1.100	1.100	Blend of Chemical PPIs.
(5.) Medical Instruments	1.014	1.795	PPI for Medical, Surgical, and Personal Aid Devices.
(6.) Photographic Supplies	0.096		
(7.) Rubber and Plastics	1.052	1.131	PPI for Rubber & Plastic Products.
(8.) Paper and Printing Products	1.000	1.021	PPI for Converted Paper & Paperboard Products.
(9.) Apparel	0.207	0.210	PPI for Apparel.
(10.) Machinery and Equipment	0.297	0.106	PPI for Machinery & Equipment.
(11.) Miscellaneous Products	1.963	0.346	PPI for Finished Goods less Food and Energy.
B. All Other Services	8.833	11.414	
(1.) Labor-related Services	5.111	4.681	
(a.) Professional Fees: Labor-related [3]	2.892	2.114	ECI for Compensation for Professional and Related Occupations.
(b.) Administrative and Business Support Services [4].	n/a	0.422	ECI for Compensation for Office and Administrative Services.
(c.) All Other: Labor-Related Services [5]	2.219	2.145	ECI for Compensation for Private Service Occupations.
(2.) Nonlabor-Related Services	3.722	6.733	
(a.) Professional Fees: Nonlabor-Related [3]	n/a	4.211	ECI for Compensation for Professional and Related Occupations.
(b.) Financial Services [5]	n/a	0.853	ECI for Compensation for Financial Activities.
(c.) Telephone Services	0.240	0.416	CPI–U for Telephone Services.
(d.) Postage	0.682	0.630	CPI–U for Postage.
(e.) All Other: Nonlabor-Related Services [6]	2.800	0.623	CPI–U for All Items less Food and Energy.
5. Capital-Related Costs	10.149	8.392	
A. Depreciation	6.187	5.519	
(1.) Fixed Assets	4.250	3.286	BEA chained price index for nonresidential construction for hospitals and special care facilities—vintage weighted (26 years).
(2.) Movable Equipment	1.937	2.233	PPI for Machinery and Equipment—vintage weighted (11 years).
B. Interest Costs	2.775	1.954	
(1.) Government/Nonprofit	2.081	0.653	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)—vintage-weighted (26 years).

TABLE 2—PROPOSED FY 2008-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES WITH FY 2002-BASED RPL MARKET BASKET COST WEIGHTS INCLUDED FOR COMPARISON—Continued

Cost categories	FY 2002-based RPL market basket cost weights	Proposed FY 2008-based RPL market basket cost weights	Proposed FY 2008-based RPL market basket price proxies
(2.) For Profit	0.694	1.301	Average yield on Moody's Aaa bonds—vintage-weighted (26 years).
C. Other Capital-Related Costs	1.187	0.919	CPI–U for Residential Rent.
Total	100.000	100.000	

Note: Detail may not add to total due to rounding.

[1] Contract Labor is distributed to Wages and Salaries and Employee Benefits based on the share of total compensation that each category represents.

[2] To proxy the Chemicals cost category, we used a blended PPI composed of the PPI for Industrial Gases, the PPI for Other Basic Inorganic Chemical Manufacturing, the PPI for Other Basic Organic Chemical Manufacturing, and the PPI for Soap and Cleaning Compound Manufacturing. For more detail about this proxy, see section III.C.3.j. of the preamble of this proposed rule.

[2] To proxy the Chemicals cost category, we used a blended PPI composed of the PPI for Industrial Gases, the PPI for Other Basic Inorganic Chemical Manufacturing, the PPI for Other Basic Organic Chemical Manufacturing, and the PPI for Soap and Cleaning Compound Manufacturing. For more detail about this proxy, see section III.C.3.j. of the preamble of this proposed rule.

[3] The Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories were included in one cost category called Professional Fees in the FY 2002-based RPL market basket. For more detail about how these new categories were derived, we refer readers to sections III.C.6. of the preamble of this proposed rule, on the labor-related share.

[4] The Administrative and Business Support Services cost category was contained within All Other: Labor-intensive Services cost category in the FY 2002-based RPL market basket. The All Other: Labor-intensive Services cost category is renamed the All Other: Labor-related Services cost category for the FY 2008-based RPL market basket.

[5] The Financial Services cost category was contained within the All Other: Non-labor Intensive Services cost category in the FY 2002-based RPL market basket. The All Other: Non-labor Intensive Services cost category is renamed the All Other: Nonlabor-related Services cost category for the FY 2008-based RPL market basket.

a. Wages and Salaries

We are proposing to use the ECI for Wages and Salaries for Hospital Workers (All Civilian) (BLS series code CIU10262200000000I) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

b. Employee Benefits

We are proposing to use the ECI for Employee Benefits for Hospital Workers (All Civilian) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

c. Electricity

We are proposing to use the PPI for Commercial Electric Power (BLS series code WPU0542). This same proxy was used in the FY 2002-based RPL market basket.

d. Fuel, Oil, and Gasoline

For the FY 2002-based RPL market basket, this category only included expenses classified under North American Industry Classification System (NAICS) 21 (Mining). We proxied this category using the PPI for Commercial Natural Gas (BLS series code WPU0552). For the proposed FY 2008-based market basket, we are proposing to add costs to this category that had previously been grouped in other categories. The added costs include petroleum-related expenses under NAICS 324110 (previously captured in the miscellaneous category), as well as petrochemical manufacturing classified under NAICS 325110 (previously captured in the chemicals category). These added costs represent 80 percent of the hospital industry's fuel, oil, and gasoline expenses (or 80 percent of this category). Because the majority of the industry's fuel, oil, and gasoline expenses originate from petroleum refineries (NAICS 324110), we are proposing to use the PPI for Petroleum Refineries (BLS series code PCU324110324110) as the proxy for this cost category.

e. Water and Sewage

We are proposing to use the CPI for Water and Sewerage Maintenance (All Urban Consumers) (BLS series code CUUR0000SEHG01) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

f. Professional Liability Insurance

We are proposing to proxy price changes in hospital professional liability insurance premiums (PLI) using percentage changes as estimated by the CMS Hospital Professional Liability Index. To generate these estimates, we collect commercial insurance premiums for a fixed level of coverage while holding nonprice factors constant (such as a change in the level of coverage). This method is also used to proxy PLI price changes in the Medicare Economic Index (75 FR 73268). This same proxy was used in the FY 2002-based RPL market basket.

g. Pharmaceuticals

We are proposing to use the PPI for Pharmaceuticals for Human Use, Prescription (BLS series code WPUSI07003) to measure the price growth of this cost category. We note that we are not making a change to the PPI that is used to proxy this cost category. There was a recent change to the BLS naming convention for this series; however this is the same proxy that was used in the FY 2002-based RPL market basket.

h. Food: Direct Purchases

We are proposing to use the PPI for Processed Foods and Feeds (BLS series code WPU02) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

i. Food: Contract Services

We are proposing to use the CPI for Food Away From Home (All Urban Consumers) (BLS series code CUUR0000SEFV) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

j. Chemicals

We are proposing to use a blended PPI composed of the PPI for Industrial Gas Manufacturing (NAICS 325120) (BLS series code PCU325120325120P), the PPI for Other Basic Inorganic Chemical Manufacturing (NAICS 325180) (BLS series code PCU32518–32518-), the PPI for Other Basic Organic Chemical Manufacturing (NAICS 325190) (BLS

series code PCU32519–32519-), and the PPI for Soap and Cleaning Compound Manufacturing (NAICS 325610) (BLS series code PCU32561–32561-). Using the 2002 Benchmark I–O data, we found that these NAICS industries accounted for approximately 90 percent of the hospital industry's chemical expenses.

Therefore, we are proposing to use this blended index because we believe its composition better reflects the composition of the purchasing patterns of hospitals than does the PPI for Industrial Chemicals (BLS series code WPU061), the proxy used in the FY 2002-based RPL market basket. Table 3 below shows the weights for each of the four PPIs used to create the blended PPI, which we determined using the 2002 Benchmark I–O data.

TABLE 3—BLENDED CHEMICAL PPI WEIGHTS

Name	Weights (in percent)	NAICS
PPI for Industrial Gas Manufacturing	35	325120
PPI for Other Basic Inorganic Chemical Manufacturing	25	325180
PPI for Other Basic Organic Chemical Manufacturing	30	325190
PPI for Soap and Cleaning Compound Manufacturing	10	325610

k. Medical Instruments

We are proposing to use the PPI for Medical, Surgical, and Personal Aid Devices (BLS series code WPU156) to measure the price growth of this cost category. In the 1997 Benchmark I–O data, approximately half of the expenses classified in this category were for surgical and medical instruments. Therefore, we used the PPI for Surgical and Medical Instruments and Equipment (BLS series code WPU1562) to proxy this category in the FY 2002-based RPL market basket. The 2002 Benchmark I–O data show that surgical and medical instruments now represent only 33 percent of these expenses and that the largest expense category is surgical appliance and supplies manufacturing (corresponding to BLS series code WPU1563). Due to this reallocation of costs over time, we are proposing to change the price proxy for this cost category to the more aggregated PPI for Medical, Surgical, and Personal Aid Devices.

l. Photographic Supplies

We are proposing to eliminate the cost category specific to photographic supplies for the proposed FY 2008-based RPL market basket. These costs would now be included in the Chemicals cost category because the costs are presently reported as all other chemical products. Notably, although we would be eliminating the specific cost category, these costs would still be accounted for within the RPL market basket.

m. Rubber and Plastics

We are proposing to use the PPI for Rubber and Plastic Products (BLS series code WPU07) to measure price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

n. Paper and Printing Products

We are proposing to use the PPI for Converted Paper and Paperboard Products (BLS series code WPU0915) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

o. Apparel

We are proposing to use the PPI for Apparel (BLS series code WPU0381) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

p. Machinery and Equipment

We are proposing to use the PPI for Machinery and Equipment (BLS series code WPU11) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

q. Miscellaneous Products

We are proposing to use the PPI for Finished Goods Less Food and Energy (BLS series code WPUSOP3500) to measure the price growth of this cost category. Using this index would remove the double-counting of food and energy prices, which would already be captured elsewhere in the market basket. This same proxy was used in the FY 2002-based RPL market basket.

r. Professional Fees: Labor-Related

We are proposing to use the ECI for Compensation for Professional and Related Occupations (Private Industry) (BLS series code CIS20200001200000I) to measure the price growth of this category. It includes occupations such as legal, accounting, and engineering services. This same proxy was used in the FY 2002-based RPL market basket.

s. Administrative and Business Support Services

We are proposing to use the ECI for Compensation for Office and Administrative Support Services (Private Industry) (BLS series code CIU2010000220000I) to measure the price growth of this category. Previously these costs were included in the All Other: Labor-intensive category (now renamed the All Other: Labor-related Services category), and were proxied by the ECI for Compensation for Service Occupations. We believe that this compensation index better reflects the changing price of labor associated with the provision of administrative services and its incorporation represents a technical improvement to the market basket.

t. All Other: Labor-Related Services

We are proposing to use the ECI for Compensation for Service Occupations (Private Industry) (BLS series code CIU2010000300000I) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

u. Professional Fees: Nonlabor-Related

We are proposing to use the ECI for Compensation for Professional and Related Occupations (Private Industry) (BLS series code CIS20200001200000I) to measure the price growth of this category. This is the same price proxy that we are proposing to use for the Professional Fees: Labor-related cost category.

v. Financial Services

We are proposing to use the ECI for Compensation for Financial Activities (Private Industry) (BLS series code CIU201520A000000I) to measure the price growth of this cost category. Previously these costs were included in the All Other: Nonlabor-intensive category (now renamed the All Other: Nonlabor-related Services category), and were proxied by the CPI for All Items. We believe that this compensation index better reflects the changing price of labor associated with the provision of

financial services and its incorporation represents a technical improvement to the market basket.

w. Telephone Services

We are proposing to use the CPI for Telephone Services (BLS series code CUUR0000SEED) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

x. Postage

We are proposing to use the CPI for Postage (BLS series code CUUR0000SEEC01) to measure the price growth of this cost category. This same proxy was used in the FY 2002-based RPL market basket.

y. All Other: Nonlabor-Related Services

We are proposing to use the CPI for All Items Less Food and Energy (BLS series code CUUR0000SA0L1E) to measure the price growth of this cost category. Previously these costs were proxied by the CPI for All Items in the FY 2002-based RPL market basket. We believe that using the CPI for All Items Less Food and Energy would remove the double counting of changes in food and energy prices, as they are already captured elsewhere in the market basket. Consequently, we believe that the incorporation of this proxy would represent a technical improvement to the market basket.

4. Proposed Methodology for Capital Portion of the RPL Market Basket

In the FY 2002-based RPL market basket, we did not have IRF, IPF, and LTCH 2002 Medicare cost report data for the capital cost weights, due to a change in the 2002 reporting requirements. Therefore, we used these hospitals' 2001 expenditure data for the capital cost categories of depreciation, interest, and other capital expenses, and aged the data to a 2002 base year using relevant price proxies.

For the proposed FY 2008-based RPL market basket, we are proposing to calculate weights for the proposed RPL market basket capital costs using the same set of FY 2008 Medicare cost reports used to develop the operating share for IRFs, IPFs, and LTCHs. To calculate the proposed total capital cost weight, we first apply the same LOS edits as applied prior to calculating the operating cost weights as described above in section III.C.3. The resulting proposed capital weight for the FY 2008 base year is 8.392 percent.

Lease expenses are unique in that they are not broken out as a separate cost category in the RPL market basket, but rather are proportionally distributed amongst the cost categories of Depreciation, Interest, and Other, reflecting the assumption that the underlying cost structure of leases is similar to that of capital costs in general. As was done in the FY 2002-based RPL market basket, we first assumed 10 percent of lease expenses represents overhead and assigned those costs to the Other Capital-Related Costs category accordingly. The remaining lease expenses were distributed across the three cost categories based on the respective weights of depreciation, interest, and other capital not including lease expenses.

Depreciation contains two subcategories: (1) Building & Fixed Equipment; and (2) Movable Equipment. The apportionment between building & fixed equipment and movable equipment was determined using the FY 2008 Medicare cost reports for freestanding IRFs, IPFs, and LTCHs. This methodology was also used to compute the apportionment used in the FY 2002-based RPL market basket (70 FR 47912).

The total Interest expense cost category is split between government/nonprofit interest and for-profit interest. The FY 2002-based RPL market basket allocated 75 percent of the total Interest cost weight to government/nonprofit interest and proxied that category by the average yield on domestic municipal bonds. The remaining 25 percent of the Interest cost weight was allocated to for-profit interest and was proxied by the average yield on Moody's Aaa bonds (70 FR 47912). This was based on the FY 2002-based IPPS capital input price index (70 FR 23406) due to insufficient Medicare cost report data for IPFs, IRFs, and LTCHs. For the proposed FY 2008-based RPL market basket, we are proposing to derive the split using the relative FY 2008 Medicare cost report data on interest expenses for government/nonprofit and for-profit IRFs, IPFs, and LTCHs. Based on these data, we calculated a proposed 33/67 split between government/nonprofit and for-profit interest. We believe it is important that this split reflects the latest relative cost structure of interest expenses for RPL providers. As stated above, we first apply the LOS edits (as described in section III.C.3.) prior to calculating this split. Therefore, we are using cost reports that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries. Using data specific to government/nonprofit and for-profit IRFs, IPFs, and LTCHs as well as the application of these LOS edits are the primary reasons for the difference in this split relative to the FY 2002-based RPL market basket.

Because capital is acquired and paid for over time, capital expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital portion of the FY 2008-based RPL market basket is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the proportion of capital purchases attributable to each year of the expected life of building & fixed equipment, movable equipment, and interest. We are proposing to use the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense.

Vintage weights are an integral part of the proposed FY 2008-based RPL market basket. Capital costs are inherently complicated and are determined by complex capital purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. The capital portion of the proposed FY 2008-based RPL market basket would reflect the annual price changes associated with capital costs, and would be a useful simplification of the actual capital investment process. By accounting for the vintage nature of capital, we are able to provide an accurate and stable annual measure of price changes. Annual nonvintage price changes for capital are unstable due to the volatility of interest rate changes and, therefore, do not reflect the actual annual price changes for Medicare capital-related costs. The capital component of the proposed FY 2008-based RPL market basket would reflect the underlying stability of the capital acquisition process and provides hospitals with the ability to plan for changes in capital payments.

To calculate the vintage weights for depreciation and interest expenses, we needed a time series of capital purchases for building & fixed equipment and movable equipment. We found no single source that provides a uniquely best time series of capital purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital data to meet this need. Data we obtained from the American Hospital Association (AHA) do not include annual capital purchases. However, AHA does provide a consistent database back to 1963. We used data from the AHA Panel Survey and the AHA Annual Survey to obtain

a time series of total expenses for hospitals. We then used data from the AHA Panel Survey supplemented with the ratio of depreciation to total hospital expenses obtained from the Medicare cost reports to derive a trend of annual depreciation expenses for 1963 through 2008.

In order to estimate capital purchases using data on depreciation expenses, the expected life for each cost category (building & fixed equipment, movable equipment, and interest) is needed to calculate vintage weights. For the FY 2002-based RPL market basket, due to insufficient Medicare cost report data for IRFs, IPFs, and LTCHs, we used 2001 Medicare Cost Reports for IPPS hospitals to determine the expected life of building & fixed equipment and movable equipment (70 FR 47913). The FY 2002-based RPL market basket was based on an expected life of building & fixed equipment of 23 years. It used 11 years as the expected life for movable equipment. We believed that this data source reflected the latest relative cost structure of depreciation expenses for hospitals at the time and was analogous to IRFs, IPFs, and LTCHs.

The expected life of any piece of equipment can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation were to continue at current year levels, assuming straight-line depreciation. Following a similar method to what was applied for the FY 2002-based RPL market basket, we are proposing to use the expected life of building & fixed equipment to be equal to 26 years, and the expected life of movable equipment to be 11 years. These expected lives are calculated using FY 2008 Medicare cost reports for IPPS hospitals since we are currently unable to obtain robust measures of the expected lives for building & fixed equipment and movable equipment using the Medicare cost reports from IRFs, IPFs, and LTCHs.

We also propose to use the building & fixed equipment and movable equipment weights derived from FY 2008 Medicare cost reports for IRFs, IPFs, and LTCHs to separate the depreciation expenses into annual amounts of building & fixed equipment depreciation and movable equipment depreciation. Year-end asset costs for building & fixed equipment and movable equipment were determined by multiplying the annual depreciation amounts by the expected life calculations. We then calculated a time series, back to 1963, of annual capital purchases by subtracting the previous year asset costs from the current year asset costs. From this capital purchase time series, we were able to calculate the vintage weights for building & fixed equipment and for movable equipment. Each of these sets of vintage weights is explained in more detail below.

For the proposed building & fixed equipment vintage weights, we used the real annual capital purchase amounts for building & fixed equipment to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building & fixed equipment was produced by deflating the nominal annual purchase amount by the building & fixed equipment price proxy, BEA's chained price index for nonresidential construction for hospitals and special care facilities. Because building & fixed equipment have an expected life of 26 years, the vintage weights for building & fixed equipment are deemed to represent the average purchase pattern of building & fixed equipment over 26-year periods. With real building & fixed equipment purchase estimates available from 2008 back to 1963, we averaged twenty 26-year periods to determine the average vintage weights for building & fixed equipment that are representative of average building & fixed equipment purchase patterns over time. Vintage weights for each 26-year period are calculated by dividing the real building & fixed capital purchase amount in any given year by the total amount of purchases in the 26-year period. This calculation is done for each year in the 26-year period, and for each of the twenty 26-year periods. We used the average of each year across the twenty 26-year periods to determine the average building & fixed equipment vintage weights for the FY 2008-based RPL market basket.

For the proposed movable equipment vintage weights, the real annual capital purchase amounts for movable equipment were used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was calculated by deflating the nominal annual purchase amounts by the movable equipment price proxy, the PPI for Machinery and Equipment. This is the same proxy used for the FY 2002-based RPL market basket. Based on our determination that movable equipment has an expected life of 11 years, the vintage weights for movable equipment represent the average expenditure for movable equipment over an 11-year period. With real movable equipment purchase estimates available from 2008 back to 1963, thirty-five 11-year periods were averaged to determine the average vintage weights for movable equipment that are representative of average movable equipment purchase patterns over time. Vintage weights for each 11-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 11-year period. This calculation was done for each year in the 11-year period and for each of the thirty-five 11-year periods. We used the average of each year across the thirty-five 11-year periods to determine the average movable equipment vintage weights for the FY 2008-based RPL market basket.

For the proposed interest vintage weights, the nominal annual capital purchase amounts for total equipment (building & fixed, and movable) were used to capture the value of the debt instrument. Because we have determined that hospital debt instruments have an expected life of 26 years, the vintage weights for interest are deemed to represent the average purchase pattern of total equipment over 26-year periods. With nominal total equipment purchase estimates available from 2008 back to 1963, twenty 26-year periods were averaged to determine the average vintage weights for interest that are representative of average capital purchase patterns over time. Vintage weights for each 26-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 26-year period. This calculation is done for each year in the 26-year period and for each of the twenty 26-year periods. We used the average of each year across the twenty 26-year periods to determine the average interest vintage weights for the FY 2008-based RPL market basket. The vintage weights for the capital portion of the FY 2002-based RPL market basket and the FY 2008-based RPL market basket are presented in Table 4.

TABLE 4—FY 2002 AND FY 2008 VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment		Movable equipment		Interest	
	FY 2002 23 years	FY 2008 26 years	FY 2002 11 years	FY 2008 11 years	FY 2002 23 years	FY 2008 26 years
1	0.021	0.021	0.065	0.071	0.010	0.010
2	0.022	0.023	0.071	0.075	0.012	0.012
3	0.025	0.025	0.077	0.080	0.014	0.014
4	0.027	0.027	0.082	0.083	0.016	0.016
5	0.029	0.028	0.086	0.085	0.019	0.018
6	0.031	0.030	0.091	0.089	0.023	0.020
7	0.033	0.031	0.095	0.092	0.026	0.021
8	0.035	0.033	0.100	0.098	0.029	0.024
9	0.038	0.035	0.106	0.103	0.033	0.026
10	0.040	0.037	0.112	0.109	0.036	0.029
11	0.042	0.039	0.117	0.116	0.039	0.033
12	0.045	0.041	.....	.....	0.043	0.035
13	0.047	0.042	.....	.....	0.048	0.038
14	0.049	0.043	.....	.....	0.053	0.041
15	0.051	0.044	.....	.....	0.056	0.043
16	0.053	0.045	.....	.....	0.059	0.046
17	0.056	0.046	.....	.....	0.062	0.049
18	0.057	0.047	.....	.....	0.064	0.052
19	0.058	0.047	.....	.....	0.066	0.053
20	0.060	0.045	.....	.....	0.070	0.053
21	0.060	0.045	.....	.....	0.071	0.055
22	0.061	0.045	.....	.....	0.074	0.056
23	0.061	0.046	.....	.....	0.076	0.060
24	.....	0.046	.....	.....	.....	0.063
25	.....	0.045	.....	.....	.....	0.064
26	.....	0.046	.....	.....	.....	0.068
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: Numbers may not add to total due to rounding.

After the capital cost category weights were computed, it was necessary to select appropriate price proxies to reflect the rate-of-increase for each expenditure category. We are proposing to use the same price proxies for the capital portion of the proposed FY 2008-based RPL market basket that were used in the FY 2002-based RPL market basket with the exception of the Boeckh Construction Index. We replaced the Boeckh Construction Index with BEA's chained price index for nonresidential construction for hospitals and special care facilities. The BEA index represents construction of facilities such as hospitals, nursing homes, hospices, and rehabilitation centers. Although these price indices move similarly over time, we believe that it is more technically appropriate to use an index that is more specific to the hospital industry. We believe these are the most appropriate proxies for hospital capital costs that meet our selection criteria of relevance, timeliness, availability, and reliability.

The price proxies (prior to any vintage weighting) for each of the capital cost categories are the same as those used for the FY 2006-based CIPI as described in the IPPS FY 2010 final rule (74 FR at 43857).

5. Proposed RY 2012 Market Basket Update

For the proposed RY 2012 (that is, beginning July 1, 2011 and ending September 30, 2012), we are proposing to use a 15-month (that is July 1, 2011 through September 30, 2012) estimate of the proposed FY 2008-based RPL market basket based on the best available data. Consistent with historical practice, we estimate the RPL market basket update for the IPF PPS based on IHS Global Insight's forecast using the most recent available data. IHS Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

To determine a 15-month market basket update for RY 2012, we calculate the 5-quarter moving average index level for July 1, 2011 through September 30, 2012 and the 4-quarter moving average index level for July 1, 2010 through June 30, 2011. The percent change in these two values represents the proposed 15-month market basket update.

Based on IHS Global Insight's 4th quarter 2010 forecast with history through the 3rd quarter of 2010, the projected 15-month market basket update for the proposed 15-month RY 2012 (July 1, 2011 through September 30, 2012) is 3.0 percent. Therefore, consistent with our historical practice of estimating market basket increases based on the best available data, we are proposing a market basket update of 3.0 percent for the proposed 15-month RY 2012. Furthermore, because the proposed RY 2012 update is based on the most recent market basket estimate for the 15-month period (currently 3.0 percent), we are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket), we would use such data, if appropriate, to determine the RY 2012 update in the final rule.

We note that the most recent estimate of the FY 2008-based RPL market basket update for July 1, 2011 through June 30, 2012, based on IHS Global Insight's 4th quarter 2010 forecast with history through the 3rd quarter of 2010, is 2.6 percent. We determine this 12-month market basket update by calculating the 4-quarter moving average index level for July 1, 2011 through June 30, 2012 and the 4-quarter moving average index level for July 1, 2010 through June 30, 2011. The percent change in these two values represents the proposed 12-month market basket update. Consistent with our historical practice of using

market basket estimates based on the most recent available data, if we were not proposing to extend the 2012 IPF PPS rate year by 3 months, we would have proposed a market basket update for a 12-month RY 2012 of 2.6 percent, based on the most recent estimate of the 12-month RPL market basket update for July 1, 2011 through June 30, 2012.

Using the current FY 2002-based RPL market basket and IHS Global Insight's 4th quarter 2010 forecast for the market basket components, the 15-month RY 2012 update would also be 3.0 percent. The 12-month RY 2012 update would be 2.6 percent. Table 5 below compares the proposed FY 2008-based RPL market basket and the FY 2002-based RPL market basket percent changes.

TABLE 5—FY 2002-BASED AND PROPOSED FY 2008-BASED RPL MARKET BASKET PERCENT CHANGE, RY 2006 THROUGH FY 2014

Rate Year (RY) or Fiscal Year (FY)	FY 2002-Based RPL Market Basket Index Percent Change	FY 2008-Based Proposed RPL Market Basket Index Percent Change
Historical data:		
RY 2006 [1]	3.8	3.7
RY 2007 [1]	3.5	3.5
RY 2008 [1]	3.5	3.6
RY 2009 [1]	3.2	3.3
RY 2010 [1]	2.2	2.1
Average 2006–2010	3.2	3.2
Forecast:		
RY 2011 [1]	2.2	2.3
RY 2012 [2]	3.0	3.0
FY 2013 [3]	3.0	2.9
FY 2014 [3]	3.0	3.0
Average 2011–2014	2.8	2.8

[1] RY 2006 through RY 2011 represent 12-month updates, which include July 1 through June 30.
[2] RY 2012 represents a 15-month update, which includes July 1, 2011 through September 30, 2012.
[3] FY 2013 through FY 2014 represent 12-month updates, which include October 1 through September 30.
Note that these market basket percent changes do not include any further adjustments as may be statutorily required.
Source: IHS Global Insight, Inc. 4th quarter 2010 forecast.

For the RY 2012 proposed market basket update, there is no difference between the 15-month top-line FY 2002-based and the proposed FY 2008-based RPL market basket increases due to offsetting factors. The lower total compensation weight in the proposed FY 2008-based RPL market basket (62.278 percent) relative to the FY 2002-based RPL market basket (65.877 percent), absent other factors, would have resulted in a slightly lower market basket update using the FY 2008-based RPL market basket. This impact, however, is offset by the larger weight associated with the Professional Fees category. In both market baskets, these expenditures are proxied by the ECI for Compensation for Professional and Related Services. The weight for Professional Fees in the FY 2002-based RPL market basket is 2.892 percent compared to 6.325 percent in the proposed FY 2008-based RPL market basket.

6. Proposed Labor-Related Share

As described in section V.C.1. of this proposed rule, due to the variations in costs and geographic wage levels, we are proposing that payment rates under the IPF PPS continue to be adjusted by a geographic wage index. This wage index would apply to the labor-related portion of the proposed Federal per diem base rate, hereafter referred to as the labor-related share.

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market. Given this, based on our definition of the labor-related share, we are proposing to include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Business Support Services, All Other: Labor-related Services (previously referred to in the FY 2002-based RPL market basket as labor-intensive), and a portion of the Capital-Related cost weight.

Consistent with previous rebasings, the All Other: Labor-related Services cost category is mostly comprised of building maintenance and security services (including, but not limited to, commercial and industrial machinery and equipment repair, nonresidential maintenance and repair, and investigation and security services). Because these services tend to be labor-intensive and are mostly performed at the hospital facility (and, therefore, unlikely to be purchased in the national market), we believe that they meet our definition of labor-related services.

As stated in the April 2010 IPF PPS notice (75 FR 23110), the labor-related share was defined as the sum of the relative importance of Wages and Salaries, Fringe Benefits, Professional Fees, Labor-intensive Services, and a portion of the capital share from an appropriate market basket. Therefore, to determine the labor-related share for the IPF PPS for RY 2011, we used the FY 2002-based RPL market basket cost weights relative importance to determine the labor-related share for the IPF PPS.

For the proposed FY 2008-based RPL market basket rebasing, the proposed inclusion of the Administrative and Business Support Services cost category into the labor-related share remains consistent with the current labor-related share because this cost category was previously included in the Labor-intensive cost category. As previously stated, we are proposing to establish a separate Administrative and Business Support Service cost category so that we can use the ECI for Compensation for Office and Administrative Support Services to more precisely proxy these specific expenses.

For the FY 2002-based RPL market basket, we assumed that all nonmedical professional services (including accounting and auditing services, engineering services, legal services, and management and consulting services) were purchased in the local labor market and, therefore, all of their associated fees varied with the local labor market. As a result, we previously included 100 percent of these costs in the labor-related share. In an effort to more accurately determine the share of professional fees that should be included in the labor-related share, we surveyed hospitals regarding the proportion of those fees that go to companies that are located beyond their own local labor market (the results are discussed below).

We continue to look for ways to refine our market basket approach to more accurately account for the proportion of costs influenced by the local labor market. To that end, we conducted a survey of hospitals to empirically determine the proportion of contracted professional services purchased by the industry that are attributable to local firms and the proportion that are purchased from national firms. We notified the public of our intent to conduct this survey on December 9, 2005 (70 FR 73250) and received no comments (71 FR 8588).

With approval from the Office of Management and Budget (OMB), we contacted a sample of IPPS hospitals and received responses to our survey from 108 hospitals. We believe that these data serve as an appropriate proxy for the purchasing patterns of professional services for IPFs as they are also institutional providers of health care services. Using data on FTEs to allocate responding hospitals across strata (region of the country and urban/rural status), we calculated poststratification weights. Based on these weighted results, we determined that hospitals purchase, on average, the following portions of contracted professional services outside of their local labor market:

- 34 percent of accounting and auditing services.
- 30 percent of engineering services.
- 33 percent of legal services.
- 42 percent of management consulting services.

We applied each of these percentages to its respective Benchmark I–O cost category underlying the professional fees cost category. This is the methodology that we used to separate the FY 2008-based RPL market basket professional fees category into Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories. In addition to the professional services listed above, we also classified expenses under NAICS 55, Management of Companies and Enterprises, into the Professional Fees cost category as was done in previous rebasings. The NAICS 55 data are mostly comprised of corporate, subsidiary, and regional managing offices, or otherwise referred to as home offices. Formerly, all of the expenses within this category were considered to vary with, or be influenced by, the local labor market and were thus included in the labor-related share. Because many hospitals are not located in the same geographic area as their home office, we analyzed data from a variety of sources in order to determine what proportion of these costs should be appropriately included in the labor-related share.

Using data primarily from the Medicare cost reports and a CMS database of Home Office Medicare Records (HOMER) (a database that provides city and state information (addresses) for home offices), we were able to determine that 19 percent of the total number of freestanding IRFs, IPFs, and LTCHs that had home offices had those home offices located in their respective local labor markets—defined as being in the same Metropolitan Statistical Area (MSA).

The Medicare cost report requires hospitals to report their home office provider numbers. Using the HOMER database to determine the home office location for each home office provider number, we compared the location of the provider with the location of the hospital's home office. We then placed providers into one of the following three groups:

- Group 1—Provider and home office are located in different States.
- Group 2—Provider and home office are located in the same State and same city.
- Group 3—Provider and home office are located in the same State and different city.

We found that 63 percent of the providers with home offices were classified into Group 1 (that is, different State) and, thus, these providers were determined to not be located in the same local labor market as their home office. Although there were a very limited number of exceptions (that is, providers located in different States but the same MSA as their home office), the 63 percent estimate was unchanged.

We found that 9 percent of all providers with home offices were classified into Group 2 (that is, same State and same city and, therefore, the same MSA). Consequently, these providers were determined to be located in the same local labor market as their home offices.

We found that 27 percent of all providers with home offices were classified into Group 3 (that is, same State and different city). Using data from the Census Bureau to determine the specific MSA for both the provider and its home office, we found that 10 percent of all providers with home offices were identified as being in the same State, a different city, but the same MSA.

Pooling these results, we were able to determine that approximately 19 percent of providers with home offices had home offices located within their local labor market (that is, 9 percent of providers with home offices had their home offices in the same State and city (and, thus, the same MSA), and 10 percent of providers with home offices had their home offices in the same State, a different city, but the same MSA). We are proposing to apportion the NAICS 55 expense data by this percentage. Thus, we are proposing to classify 19 percent of these costs into the Professional Fees: Labor-related cost category and the remaining 81 percent into the Professional Fees: Nonlabor-related Services cost category.

Table 6 below shows the proposed RY 2012 relative importance labor-related share using the proposed FY 2008-based RPL market basket and the FY 2002-based RPL market basket.

TABLE 6—COMPARISON OF THE RY 2011 (12-MONTH) RELATIVE IMPORTANCE LABOR-RELATED SHARE BASED ON THE FY 2002-BASED RPL MARKET BASKET AND THE PROPOSED RY 2012 (15-MONTH) RELATIVE IMPORTANCE LABOR-RELATED SHARE BASED ON THE PROPOSED FY 2008-BASED RPL MARKET BASKET

	RY 2011 Relative importance labor-related share	Proposed RY 2012 relative importance labor-related share
Wages and Salaries	52.600	49.248
Employee Benefits	13.935	12.988
Professional Fees: Labor-Related	2.853	2.085
Administrative and Business Support Services	.....	0.417
All Other: Labor-Related Services	2.118	2.104
Subtotal	71.506	66.842
Labor-Related Portion of Capital Costs (46%)	3.894	3.657
Total Labor-Related Share	75.400	70.499

The proposed labor-related share for RY 2012 is the sum of the proposed RY 2012 relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2008) and RY 2012. The sum of the proposed relative importance for RY 2012 for operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Business Support Services, and All Other: Labor-related Services) would be 66.842 percent, as shown in Table 6 above. We are proposing that the portion of Capital that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the FY 2002-based RPL market basket. Since the relative importance for Capital-Related Costs would be 7.950 percent of the proposed FY 2008-based RPL market basket in RY 2012, we are proposing to take 46 percent of 7.950 percent to determine the proposed labor-related share of Capital for RY 2012. The result would be 3.657 percent, which we propose to add to 66.842 percent for the operating cost amount to determine the total proposed labor-related share for RY 2012. Therefore, the labor-related share that we propose to use for IPF PPS in RY 2012 would be 70.499 percent. This proposed labor-related share is determined using the same methodology as employed in calculating all previous IPF labor-related shares (69 FR 66952). The wage index and the labor-related share are adjusted for budget neutrality.

IV. Updates to the IPF PPS for RY Beginning July 1, 2011

The IPF PPS is based on a standardized Federal per diem base rate calculated from IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient- and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA requires that we implement the IPF PPS in a budget neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented.

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Standardization of the Federal Per Diem Base Rate and Electroconvulsive Therapy (ECT) Rate

In the November 2004 IPF PPS final rule, we describe how we standardized the IPF PPS Federal per diem base rate in order to account for the overall positive effects of the IPF PPS payment adjustment factors. To standardize the IPF PPS payments, we compared the IPF PPS payment amounts calculated from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file to the projected TEFRA payments from the FY 2002 cost report file updated to the midpoint of the IPF PPS implementation period (that is, October 2005). The standardization factor was calculated by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The standardization factor was calculated to be 0.8367.

As described in detail in the May 2006 IPF PPS final rule (71 FR 27045), in reviewing the methodology used to simulate the IPF PPS payments used for the November 2004 IPF PPS final rule, we discovered that due to a computer code error, total IPF PPS payments were underestimated by about 1.36 percent. Since the IPF PPS payment total should have been larger than the estimated figure, the standardization factor should have been smaller (0.8254 vs. 0.8367). In turn, the Federal per diem base rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, in RY 2007, we amended the Federal per diem base rate and the ECT payment rate prospectively. Using the standardization factor of 0.8254, the average cost per day was effectively reduced by 17.46 percent (100 percent minus 82.54 percent = 17.46 percent).

2. Calculation of the Budget Neutrality Adjustment

To compute the budget neutrality adjustment for the IPF PPS, we separately identified each component of the adjustment, that is, the outlier adjustment, stop-loss adjustment, and behavioral offset.

A complete discussion of how we calculate each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046).

a. Outlier Adjustment

Since the IPF PPS payment amount for each IPF includes applicable outlier amounts, we reduced the standardized Federal per diem base rate to account for aggregate IPF PPS payments estimated to be made as outlier payments. The outlier adjustment was calculated to be 2 percent. As a result, the standardized Federal per diem base rate was reduced by 2 percent to account for projected outlier payments.

b. Stop-Loss Provision Adjustment

As explained in the November 2004 IPF PPS final rule, we provided a stop-loss payment during the transition from cost-based reimbursement to the per diem payment system to ensure that an IPF's total PPS payments were no less than a minimum percentage of their TEFRA payment, had the IPF PPS not been implemented. We reduced the standardized Federal per diem base rate by the percentage of aggregate IPF PPS payments estimated to be made for stop-loss payments. As a result, the standardized Federal per diem base rate was reduced by 0.39 percent to account for stop-loss payments. Since the transition was completed in RY 2009, the stop-loss provision is no longer applicable, and for cost reporting periods beginning on or after January 1, 2008, IPFs were paid 100 percent PPS.

c. Behavioral Offset

As explained in the November 2004 IPF PPS final rule, implementation of the IPF PPS may result in certain changes in IPF practices, especially with respect to coding for comorbid medical conditions. As a result, Medicare may make higher payments than assumed in our calculations. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

Based on accepted actuarial practices and consistent with the assumptions made in other PPSs, we assumed in determining the behavioral offset that IPFs would regain 15 percent of potential ''losses'' and augment payment increases by 5 percent. We applied this actuarial assumption, which is based on our historical experience with new payment systems, to the estimated ''losses'' and ''gains'' among the IPFs. The behavioral offset for the IPF PPS was calculated to be 2.66 percent. As a result, we reduced the standardized Federal per diem base rate by 2.66 percent to account for behavioral changes. As indicated in the November 2004 IPF PPS final rule, we do not plan to change adjustment factors or projections until we analyze IPF PPS data.

If we find that an adjustment is warranted, the percent difference may be applied prospectively to the established PPS rates to ensure the rates accurately reflect the payment level intended by the statute. In conducting this analysis, we will be interested in the extent to which improved coding of patients' principal and other diagnoses, which may not reflect real increases in underlying resource demands, has occurred under the PPS.

B. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

As described in the November 2004 IPF PPS final rule (69 FR 66931), the average per diem cost was updated to the midpoint of the implementation year. This updated average per diem cost of $724.43 was reduced by 17.46 percent to account for standardization to projected TEFRA payments for the implementation period, by 2 percent to account for outlier payments, by 0.39 percent to account for stop-loss payments, and by 2.66 percent to account for the behavioral offset. The Federal per diem base rate in the implementation year was $575.95. The increase in the per diem base rate for RY 2009 included the 0.39 percent increase due to the removal of the stop-loss provision. We indicated in the November 2004 IPF PPS final rule (69 FR 66932) that we would remove this 0.39 percent reduction to the Federal per diem base rate after the transition. As discussed in section IV.D.2. of the May 2008 IPF PPS notice, we increased the Federal per diem base rate and the ECT base rate by 0.39 percent in RY 2009. Therefore for RY 2009 and beyond, the stop-loss provision has ended and is no longer a part of budget neutrality.

In accordance with section 1886(s)(2)(A)(ii) of the Act, which requires the application of an ''other adjustment,'' described in section 1886(s)(3) of the Act (specifically, section 1886(s)(3)(A) for RYs 2011 and 2012) that reduces the update to the IPF PPS base rate for the rate year beginning in Calendar Year (CY) 2011, we are proposing to adjust the IPF PPS update by 0.25 percentage point for rate year 2012. We are proposing to apply the 15-month 2008-based RPL market basket increase of 3.0 percent, as adjusted by the ''other adjustment'' of −0.25 percentage point, and the wage index budget neutrality factor of 0.9995 to the RY 2011 Federal per diem base rate of $665.71 yielding a proposed Federal per diem base rate of $683.68 for RY 2012. Similarly, we propose applying the market basket increase, as adjusted by the ''other adjustment'', and the wage index budget neutrality factor to the RY 2011 ECT base rate, yielding a proposed ECT base rate of $294.33 for RY 2012.

V. Proposed Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For this proposed rule, we used the same results of the regression analysis used to implement the November 2004 IPF PPS final rule. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to set the fixed dollar loss threshold amount, we used the same results of this regression analysis to update the IPF PPS for RY 2011 and we are proposing to use these same results for RY 2012. Now that we are approximately 5 years into the IPF PPS, we believe that we have enough data to begin looking at the process of refining the IPF PPS as appropriate. We believe that in the next rulemaking, for FY 2013, we will be ready to propose potential refinements to the system.

As we stated previously, we do not plan to update the regression analysis until we are able to analyze IPF PPS claims and cost report data. However, we continue to monitor claims and payment data independently from cost report data to assess issues, to determine whether changes in case-mix or payment shifts have occurred among freestanding governmental, non-profit and private psychiatric hospitals, and psychiatric units of general hospitals, and CAHs and other issues of importance to IPFs.

B. Proposed Patient-Level Adjustments

In the April 2010 IPF PPS notice (75 FR 23113 through 23117), we

announced payment adjustments for the following patient-level characteristics: Medicare Severity diagnosis related groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

1. Proposed Adjustment for MS–IPF–DRG Assignment

The IPF PPS includes payment adjustments for the psychiatric DRG assigned to the claim based on each patient's principal diagnosis. The IPF PPS recognizes the MS–DRGs. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis.

In accordance with § 412.27(a), payment under the IPF PPS is conditioned on IPFs admitting ''only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in Chapter Five (''Mental Disorders'') of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM)'' or in the Fourth Edition, Text Revision of the American Psychiatric Association's Diagnostic and Statistical Manual, (DSM–IV–TR). IPF claims with a principal diagnosis included in Chapter Five of the ICD–9–CM or the DSM–IV–TR are paid the Federal per diem base rate under the IPF PPS and all other applicable adjustments, including any applicable DRG adjustment. Psychiatric principal diagnoses that do not group to one of the designated DRGs still receive the Federal per diem base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

The Standards for Electronic Transaction final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312), adopted the ICD–9–CM as the designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health related problems. Therefore, we use the ICD–9–CM as the designated code set for the IPF PPS.

We believe that it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing psychiatric care. Therefore, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set and DRG patient classification system (that is, the CMS DRGs) that were utilized at the time under the hospital inpatient prospective payment system (IPPS). Since the inception of the IPF PPS, the DRGs used as the patient classification system under the IPF PPS have corresponded exactly with the CMS DRGs applicable under the IPPS for acute care hospitals.

Every year, changes to the ICD–9–CM coding system are addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update. We publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. Those ICD–9–CM coding changes are also published in the following IPF PPS RY update, in either the IPF PPS proposed and final rules, or in an IPF PPS update notice.

In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). We believe by better accounting for patients' severity of illness in Medicare payment rates, the MS–DRGs encourage hospitals to improve their coding and documentation of patient diagnoses. The MS–DRGs, which are based on the CMS DRGs, represent a significant increase in the number of DRGs (from 538 to 745, an increase of 207). For a full description of the development and implementation of the MS–DRGs, see the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175).

In the May 2008 IPF PPS notice, the IPF PPS recognized the MS–DRGs. A crosswalk, to reflect changes that were made to the DRGs under the IPF PPS to the new MS–DRGs was provided (73 FR 25716). Since then, we have referred to the IPF PPS DRGs as MS–DRGs. In this proposed rule, we are proposing that all references to the MS–DRGs used for the IPF PPS, would be to MS–IPF–DRGs. This would only be a change in terminology. We are proposing to revise § 412.402 to add the definition of MS–IPF–DRG.

All of the ICD–9–CM coding changes are reflected in the FY 2011 GROUPER, Version 28.0, effective for IPPS discharges occurring on or after October 1, 2010 through September 30, 2011. The GROUPER Version 28.0 software package assigns each case to an MS–DRG on the basis of the diagnosis and procedure codes and demographic information (that is, age, sex, and discharge status). The Medicare Code Editor (MCE) 27.0 uses the new ICD–9–CM codes to validate coding for IPPS discharges on or after October 1, 2010. For additional information on the GROUPER Version 28.0 and MCE 27.0, see Transmittal 2060 (Change Request 7134), dated October 1, 2010. The IPF PPS has always used the same GROUPER and Code Editor as the IPPS. Therefore, the ICD–9–CM changes, which were reflected in the GROUPER Version 28.0 and MCE 27.0 on October 1, 2010, also became effective for the IPF PPS for discharges occurring on or after October 1, 2010.

The impact of the new MS–DRGs on the IPF PPS was negligible. Mapping to the MS–DRGs resulted in the current 17 MS–DRGs, instead of the original 15, for which the IPF PPS provides an adjustment. Although the code set is updated, the same associated adjustment factors apply now that have been in place since implementation of the IPF PPS, with one exception that is unrelated to the update to the codes. When DRGs 521 and 522 were consolidated into MS–DRG 895, we carried over the adjustment factor of 1.02 from DRG 521 to the newly consolidated MS–DRG. This was done to reflect the higher claims volume under DRG 521, with more than eight times the number of claims than billed under DRG 522. The updates are reflected in Tables 7 and 8. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2009 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, DC 20402–9329, telephone number (202) 512–1800. Questions concerning the ICD–9–CM should be directed to Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Further information concerning the official version of the ICD–9–CM can be found in the IPPS final rule with

comment period, ''Changes to Hospital Inpatient Prospective Payment System and Fiscal Year 2011 Rates'' in the August 16, 2010 **Federal Register** (75 FR 50042) and at Tables 7 and 8 below list the FY 2011 new and revised ICD–9–CM diagnosis codes that group to one of the 17 MS–DRGs for which the IPF PPS provides an adjustment. These tables are only a listing of FY 2011 changes and do not reflect all of the currently valid and applicable ICD–9–CM codes classified in the MS–DRGs. When coded as a principal code or diagnosis, these codes receive the correlating MS–DRG adjustment.

TABLE 7—FY 2011 NEW DIAGNOSIS CODES

Diagnosis code	MS–DRG descriptions	MS–DRG
799.51	Attention or concentration deficit	886
799.52	Cognitive communication deficit	884
799.54	Psychomotor deficit	884
799.55	Frontal lobe and executive function deficit	884
799.59	Other signs and symptoms involving cognition	884

TABLE 8—FY 2011 REVISED DIAGNOSIS CODE

Diagnosis code	Description	MS–DRG
307.0	Adult onset fluency disorder	887

Because we do not plan to update the regression analysis until we are able to analyze IPF PPS data, we propose that the MS–IPF–DRG adjustment factors (as shown in Table 9) would continue to be paid for discharges occurring in RY 2012.

TABLE 9—PROPOSED RY 2012 CURRENT MS–IPF–DRGS APPLICABLE FOR THE PRINCIPAL DIAGNOSIS ADJUSTMENT

MS–DRG	MS–IPF–DRG Descriptions	Adjustment Factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.05
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.88

2. Proposed Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the April 2010 IPF PPS notice (75 FR 23114), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2011 (75 FR 23115).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment per comorbidity category, but it may receive an adjustment for more than one comorbidity category. Billing instructions require that IPFs must enter the full ICD–9–CM codes for up to 8 additional diagnoses if they co-exist at the time of admission or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM ''code first'' instructions apply. As we explained in the April 2010 IPF PPS notice (75 FR 23115), the code first rule applies when

a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, the ICD–9–CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a ''use additional code'' note at the etiology code and a code first note at the manifestation code.

As discussed in the MS–IPF–DRG section (where we are proposing that all references to MS–DRGs used for the IPF PPS be to MS–IPF–DRGs, as detailed above), it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. Although the ICD–9–CM code set has been updated, the same adjustment factors have been in place since the implementation of the IPF PPS.

Table 10 below lists the FY 2011 new ICD diagnosis codes that impact the comorbidity adjustments under the IPF PPS. Table 10 is not a list of all currently valid ICD codes applicable for the IPF PPS comorbidity adjustments.

TABLE 10—FY 2011 NEW ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	Comorbidity category
237.73	Schwannomatosis	Oncology.
237.79	Other neurofibromatosis	Oncology.

For RY 2012, we are applying the seventeen comorbidity categories for which we are providing an adjustment, their respective codes, including the new FY 2011 ICD–9–CM codes, and their respective adjustment factors in Table 11 below.

TABLE 11—RY 2012 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	Diagnoses codes	Adjustment factor
Developmental disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	51900 through 51909 and V440	1.06
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859, 586, V451, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21–92.29 or chemotherapy code 99.25.	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein Calorie Malnutrition	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease	49121, 4941, 5100, 51883, 51884, V4611 and V4612, V4613 and V4614.	1.12
Artificial Openings—Digestive and Urinary	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029.	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

3. Proposed Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (that is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

We do not plan to update the regression analysis until we are able to analyze IPF PPS data. Therefore, for RY 2012, we are proposing to continue to use the patient age adjustments currently in effect as shown in Table 12 below.

TABLE 12—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Proposed Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section IV.C.5 of this proposed rule.

For RY 2012, we are proposing to continue to use the variable per diem adjustment factors currently in effect as shown in Table 13 below. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

TABLE 13—VARIABLE PER DIEM ADJUSTMENTS

Day-of-Stay	Adjustment factor
Day 1—IPF Without a Qualifying ED	1.19
Day 1—IPF With a Qualifying ED	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

C. Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Proposed Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule and in the May 2008 and May 2009 IPF PPS notices, in providing an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through § 412.64(C).

b. Proposed Wage Index for RY 2012

Since the inception of the IPF PPS, we have used hospital wage data in developing a wage index to be applied to IPFs. We are continuing that practice for RY 2012. We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 70.499 percent. This percentage reflects the labor-related relative importance of the proposed FY 2008-based RPL market basket for RY 2012 (see section III.C.6 of this proposed rule). The IPF PPS uses the pre-floor, pre-reclassified hospital wage index. Changes to the wage index are made in a budget neutral manner so that updates do not increase expenditures.

For RY 2012, we are proposing to apply the most recent hospital wage index (that is, the FY 2011 pre-floor, pre-reclassified hospital wage index because this is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from hospital cost reports for the cost reporting period beginning during FY 2007), and applying an adjustment in accordance with our budget neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments in RY 2011 using the applicable wage index value divided by the total estimated IPF PPS payments in RY 2012 using the most recent wage index. The estimated payments are based on FY 2009 IPF claims, inflated to the appropriate RY. This quotient is the wage index budget neutrality factor, and it is applied in the update of the Federal per diem base rate for RY 2012 in addition to the market basket described in section III.C.5 of this proposed rule. The wage index budget neutrality factor for RY 2012 is 0.9995.

The wage index applicable for RY 2012 appears in Table 1 and Table 2 in Addendum B of this proposed rule. As explained in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), the IPF PPS applies the hospital wage index without a hold-harmless policy, and without an out-commuting adjustment or out-migration adjustment because the statutory authority for these policies applies only to the IPPS.

Also in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, since the IPF PPS was already in a transition period from TEFRA payments to PPS payments, we did not provide a separate transition for the CBSA-based wage index.

As was the case in RY 2011, for RY 2012 we are proposing to continue to use the CBSA-based wage index values as presented in Tables 1 and 2 in Addendum B of this proposed rule. A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

In summary, for RY 2012 we are proposing to use the FY 2011 wage index data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2007) to adjust IPF PPS payments beginning July 1, 2011.

c. OMB Bulletins

The Office of Management and Budget (OMB) publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IPF PPS wage index (73 FR 25721). We will continue to do the same for all such OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary. The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

2. Proposed Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For RY 2012, we are proposing to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). As stated in the November 2004 IPF PPS final rule, we do not intend to update the adjustment factors derived from the regression analysis until we are able to analyze IPF PPS data. A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Proposed Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the PPSs. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare does not make separate payments for indirect medical education costs because payments to these hospitals are based on the hospitals' reasonable costs which already include these higher indirect costs that may be associated with teaching programs.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant.

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, for RY 2012, we are proposing to retain the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721).

Proposed FTE Intern and Resident Cap Adjustment

CMS has been asked to reconsider the current IPF teaching policy and permit a temporary increase in the FTE resident cap when the IPF increases the number of FTE residents it trains due to the acceptance of displaced residents (residents that are training in an IPF or a program before the IPF or program closed) when another IPF closes or closes its medical residency training program.

To help us assess how many IPFs have been, or expect to be adversely affected by their inability to adjust their caps under § 412.424(d)(1) and under these situations, we specifically requested public comment from IPFs in the May 1, 2009 IPF PPS notice (74 FR 20376 through 20377). A summary of the comments and our response can be reviewed in the April 30, 2010 IPF PPS notice (75 FR 23106, 23117). All of the commenters recommended that CMS modify the IPF PPS teaching adjustment policy, supporting a policy change that would permit the IPF PPS residency cap to be temporarily adjusted when that IPF trains displaced residents due to closure of an IPF or closure of an IPF's medical residency training program(s). The commenters recommended a temporary resident cap adjustment policy similar to such policies applied in similar contexts for acute care hospitals.

We agree with the commenters that, when a hospital temporarily takes on residents because another hospital closes or discontinues its program, a temporary adjustment to the cap would be appropriate for rotation that occurs in an IPF setting (freestanding or units). In these situations, residents may have partially completed a medical residency training program at the hospital that has closed its training program and may be unable to complete their training at another hospital that is already training residents up to or in excess of its cap. We believe that it is appropriate to allow temporary adjustments to the FTE caps for an IPF that provides residency training to medical residents who have partially completed a residency training program at an IPF that closes or at an IPF that discontinues training residents in a residency training program(s) (also referred to as a ''closed'' program throughout this preamble). For this reason, we are proposing to adopt the following temporary resident cap adjustment policies, similar to the temporary adjustments to the FTE cap used for acute care hospitals. We are proposing that the cap adjustment would be temporary because it is resident specific and would only apply to the displaced resident(s) until the resident(s) completes training in that specialty. We propose that, as under the IPPS policy for displaced residents, the IPF PPS temporary cap adjustment would apply only to residents that were still training at the IPF at the time the IPF closed or at the time the IPF ceased training residents in the residency training program(s). Residents who leave the IPF, for whatever reason,

before the closure of the IPF hospital or medical residency training program would not be considered displaced residents for purposes of the IPF temporary cap adjustment policy. Similarly, as under the IPPS policy, we are proposing that medical students who match to a program at an IPF but the IPF or medical residency training program closes before the individual begins training at that IPF are also not considered displaced residents for purposes of the IPF temporary cap adjustments. For detailed information on these acute care hospital GME/IME payment policies, see 66 FR 39899 (August 1, 2001), 64 FR 41522 (July 30 1999), and 64 FR 24736 (May 7 1999). We note that although we are proposing to adopt a policy under the IPF PPS that is consistent with the policy applicable under the IPPS, the actual caps under the two payment systems may not be commingled.

a. Proposed Temporary Adjustment to the FTE Cap To Reflect Residents Added Due to Hospital Closure

We are proposing to allow an IPF to receive a temporary adjustment to the FTE cap to reflect residents added because of another IPF's closure. This adjustment is intended to account for medical residents who would have partially completed a medical residency training program at the hospital that has closed and may be unable to complete their training at another hospital because that hospital is already training residents up to or in excess of its cap. We are proposing this change because IPFs have indicated a reluctance to accept additional residents from a closed IPF without a temporary adjustment to their caps. For purposes of this policy on IPF closure, we are proposing to adopt the IPPS definition of ''closure of a hospital'' in 42 CFR § 413.79(h) to mean the IPF terminates its Medicare provider agreement as specified in 42 CFR § 489.52. Therefore, we are proposing to add a new § 412.424(d)(1)(iii)(F)(1) to allow a temporary adjustment to an IPF's FTE cap to reflect residents added because of an IPF's closure on or after July 1, 2011 to be effective for cost reporting periods beginning on or after July 1, 2011. We would allow an adjustment to an IPF's FTE cap if the IPF meets the following criteria: (a) The IPF is training displaced residents from an IPF that closed on or after July 1, 2011; (and (b) the IPF that is training the displaced residents from the closed IPF submits a request for a temporary adjustment to its FTE cap to its Medicare contractor no later than 60 days after the hospital first begins training the displaced residents, and documents that the IPF is eligible for this temporary adjustment to its FTE cap by identifying the residents who have come from the closed IPF and have caused the IPF to exceed its cap, (or the IPF may already be over its cap), and specifies the length of time that the adjustment is needed. After the displaced residents leave the IPF's training program or complete their residency program, the IPF's cap would revert to its original level. This means that the temporary adjustment to the FTE cap would be available to the IPF only for the period of time necessary for the displaced residents to complete their training. Further, as under the IPPS policy, we are also proposing that the total amount of temporary cap adjustment that can be distributed to all receiving hospitals cannot exceed the cap amount of the IPF that closed.

We also note that section 5506 of the Affordable Care Act, ''Preservation of Resident Cap Positions from Closed Hospitals,'' does not apply to IPFs that closed. Section 5506 only amends sections 1886(d) and (h) of the Act with respect to direct GME and IPPS IME payments. Therefore, the IME FTE cap redistributions under section 5506 only apply to ''subsection (d)'' IPPS hospitals. Section 5506 has no applicability to the IME teaching adjustments under the IPF PPS (or the IRF PPS, for that matter).

b. Proposed Temporary Adjustment to FTE Cap To Reflect Residents Affected by Residency Program Closure

We are proposing that if an IPF that ceases training residents in a residency training program(s) agrees to temporarily reduce its FTE cap, another IPF may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program. For purposes of this policy on closed residency programs, we are proposing to adopt the IPPS definition of ''closure of a hospital residency training program'' to mean that the hospital ceases to offer training for residents in a particular approved medical residency training program as specified in § 413.79(h). The methodology for adjusting the caps for the ''receiving IPF'' and the ''IPF that closed its program'' is described below.

i. Receiving IPF

We are proposing that an IPF(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program for cost reporting periods beginning on or after July 1, 2011 if—

- The IPF is training additional residents from the residency training program of an IPF that closed its program on or after July 1, 2011; and
- No later than 60 days after the IPF begins to train the residents, the IPF submits to its Medicare Contractor a request for a temporary adjustment to its FTE cap, documents that the IPF is eligible for this temporary adjustment by identifying the residents who have come from another IPF's closed program and have caused the IPF to exceed its cap, (or the IPF may already be in excess of its cap), specifies the length of time the adjustment is needed, and, as explained in more detail below, submits to its Medicare contractor a copy of the FTE cap reduction statement by the IPF closing the residency training program.

In general, the proposed temporary adjustment criteria established for closed medical residency training programs at IPFs is similar to the criteria established for closed IPFs. We are proposing that more than one IPF may be eligible to apply for the temporary adjustment because residents from one closed program may migrate to different IPFs, or they may complete their training at more than one IPF. Also, only to the extent to which an IPF would exceed its FTE cap by training displaced residents would it be eligible for the temporary adjustment.

Finally, we are proposing that IPFs that meet the proposed criteria would be eligible to receive temporary adjustments to their FTE caps for cost reporting periods beginning on or after July 1, 2011.

ii. IPF That Closed Its Program(s)

We are proposing that an IPF that agrees to train residents who have been displaced by the closure of another IPF's resident teaching program may receive a temporary FTE cap adjustment only if the IPF with the closed program meets the following criteria—

- Temporarily reduces its FTE cap by the number of FTE residents in each program year training in the program at the time of the program's closure. The yearly reduction would be determined by deducting the number of those residents who would have been training in the program during the year of the closure, had the program not closed; and
- No later than 60 days after the residents who were in the closed program begin training at another IPF, submits to its Medicare contractor a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the IPF training the displaced residents to obtain a

temporary adjustment to its cap; identifies the residents who were training at the time of the program's closure; identifies the IPFs to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

Unlike the proposed closed IPF policy at § 412.424(d)(1)(iii)(F)(1), we propose under this closed program policy that in order for the receiving IPF(s) to qualify for a temporary adjustment to their FTE cap, the IPFs that are closing their programs would need to reduce their FTE cap for the duration of time the displaced residents would need to finish their training. We are proposing this because the IPF that closes the program still retains the FTE slots in its cap, even if the IPF chooses not to fill the slots with residents. We believe it is inappropriate to allow an increase to the receiving IPF's cap without an attendant decrease to the cap of the IPF with the closed program, because the IPF that closed a program(s) could fill these slots with residents from other programs even if the increase and related decrease is only temporary.

We are proposing that the cap reduction for the IPF with the closed program would be based on the number of FTE residents in each program year who were in the program at the IPF at the time of the program's closure, and who begin training at another IPF.

In summary we are proposing to revise § 412.424(d)(1)(iii) and to establish § 412.424(d)(1)(iii)(F)(2) to implement policies related to temporary adjustments to FTE caps to reflect residents added due to closure of an IPF or an IPFs medical residency training program.

4. Proposed Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) have adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA adjustment for IPFs located in Alaska and Hawaii is made by multiplying the nonlabor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

As previously stated in the November 2004 IPF PPS final rule, we will update the COLA factors according to updates established by the U.S. Office of Personnel Management (OPM), which issued a final rule, May 28, 2008 to change COLA rates.

The COLA factors are published on the OPM Web site at (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

(a) City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(b) City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(c) City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(d) Rest of the State of Alaska.

For RY 2012, we are proposing that IPFs located in Alaska and Hawaii will continue to receive the updated COLA factors based on the COLA area in which the IPF is located as shown in Table 14 below.

TABLE 14—PROPOSED COLA FACTORS FOR ALASKA AND HAWAII IPFS

	Location	COLA
Alaska	Anchorage	1.19
	Fairbanks	1.19
	Juneau	1.19
	Rest of Alaska	1.21
Hawaii	Honolulu County	1.21
	Hawaii County	1.14
	Kauai County	1.21
	Maui County	1.21
	Kalawao County	1.21

5. Proposed Adjustment for IPFs With a Qualifying Emergency Department (ED)

Currently, the IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute hospital or a CAH for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS) furnished to a beneficiary during the day immediately preceding the date of admission to the IPF (*see* § 413.40(c)(2)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made where a patient is discharged from an acute care hospital or critical access hospital (CAH) and admitted to the same hospital's or CAH's psychiatric unit. An ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH. If we provided the ED adjustment in these cases, the hospital would be paid twice for the overhead costs of the ED, as stated in the November 2004 IPF PPS final rule (69 FR 66960).

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF.

For RY 2012, we are proposing to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

For RY 2012, the IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial

risk of IPFs treating unusually costly patients. In this section, we also explain the reason for ending the stop-loss provision that was applicable during the transition period.

1. Proposed Outlier Payments

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of $6,372 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Proposed Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are proposing to update the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

We believe it is necessary to update the fixed dollar loss threshold amount because an analysis of the latest available data (that is, FY 2009 IPF claims) and rate increases indicates that adjusting the fixed dollar loss amount is necessary in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments.

In the May 2006 IPF PPS final rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We are proposing to continue to use this process for RY 2012. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine an outlier fixed dollar loss threshold amount that will result in outlier payments being equal to 2 percent of total estimated payments under the simulation. Based on this process, using the FY 2009 claims data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 2.2 percent in RY 2010. Thus, we are proposing to update the RY 2012 IPF outlier threshold amount to ensure that estimated RY 2012 outlier payments are approximately 2 percent of total estimated IPF payments. We are proposing to change the outlier fixed dollar loss threshold amount of $6,372 for RY 2011 to $7,316 for RY 2012 to reduce estimated outlier payments and thereby maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for RY 2012.

b. Proposed Statistical Accuracy of Cost-to-Charge Ratios

As previously stated, under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In FY 2004, we implemented changes to the IPPS outlier policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule, because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted an approach to ensure the statistical accuracy of CCRs under the IPF PPS (69 FR 66961). Therefore, we adopted the following procedure in the November 2004 IPF PPS final rule:

- We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). We estimated a proposed upper threshold CCR for IPFs in RY 2012 of 1.8522 for rural IPFs, and 1.7619 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

++ New IPFs that have not yet submitted their first Medicare cost report.

++ IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).

++ Other IPFs for which the Medicare contractor obtains inaccurate or incomplete data with which to calculate a CCR.

For new IPFs, we are using these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

We are not making any changes to the procedures for ensuring the statistical accuracy of CCRs in RY 2012. However, we are proposing to update the national urban and rural CCRs (ceilings and medians) for IPFs for RY 2012 based on the CCRs entered in the latest available IPF PPS Provider Specific File.

Specifically, for RY 2012, and to be used in each of the three situations listed above, we estimate a proposed national average CCR of 0.6480 for rural IPFs and a proposed national average CCR of 0.5140 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Expiration of the Stop-Loss Provision

In the November 2004 IPF PPS final rule, we implemented a stop-loss policy that reduced financial risk to IPFs projected to experience substantial reductions in Medicare payments during the period of transition to the IPF PPS. This stop-loss policy guaranteed that each facility received total IPF PPS payments that were no less than 70 percent of its TEFRA payments had the IPF PPS not been implemented. This policy was applied to the IPF PPS portion of Medicare payments during the 3-year transition.

In the implementation year, the 70 percent of TEFRA payment stop-loss policy required a reduction in the standardized Federal per diem and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral. As described in the May 2008 IPF PPS notice for RY 2009, we increased the Federal per diem base rate and ECT rate by 0.39 percent because these rates were reduced by 0.39 percent in the implementation year to ensure stop-loss payments were budget neutral.

The stop-loss provision ended during RY 2009 (that is for discharges occurring on or after July 1, 2008 through June 30, 2009). The stop-loss policy is no longer applicable under the IPF PPS.

3. Future Refinements

As we have noted throughout this proposed rule, we have delayed making refinements to the IPF PPS until we have adequate IPF PPS data on which to base those decisions. Now that we are approximately 5 years into the system, we believe that we have enough data to begin that process. We have begun the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS as appropriate. While we are not proposing to make the following refinements in this rulemaking, we believe that in the rulemaking for FY 2013 we will be ready to present the results of our analysis.

Specifically, with the change from ICD–9–CM to ICD–10–CM coming in 2013, we are analyzing the comorbidity categories and related codes for utilization and continued suitability. While we would continue to provide for comorbidity adjustments, we are analyzing whether the current groupings and codes continue to be warranted and whether other appropriate codes should be added. Also, we are analyzing our current policies for interrupted stays, readmissions, same-day transfers, and length of stays in order to assess whether these policies continue to be appropriate. Additionally, in accordance with section 1886(s)(4) of the Act, which was added by section 10322 of the Affordable Care Act, IPFs must submit data on quality measures, as specified by the Secretary, for each RY beginning in RY 2014. If data is not submitted, any annual update to a Federal base rate for discharges for the payments shall be reduced by 2 percentage points. Quality measures are currently being developed to effectuate this requirement. Lastly, for the first time MedPAC will become involved in evaluating facility margins and will likely make recommendations regarding the appropriate payment update to IPFs based on their findings. CMS is interested in gaining feedback on these areas for future refinements and therefore we invite comments on these issues described in this section at this time.

VI. Proposed Regulations Text Corrections

We are proposing several minor corrections to the regulations text to address typographical errors. We note that these proposed changes do not impact policy. We are proposing to correct typographical errors at § 412.404, ''Conditions for payment under the prospective payment system for inpatient hospital services of psychiatric facilities; § 412.422, ''Basis of payment;'' and § 412.426, ''Transition period.'' In addition to these corrections, we are proposing to add clarifying language at § 412.426 and § 412.432(d), ''Method of payment under the inpatient psychiatric facility prospective payment system.'' The proposed revisions are described below.

Section 412.404(a)(1)

Under § 412.404, in paragraph (a)(1), ''General requirements,'' we are proposing to delete the word ''in'' between the words ''furnished'' and ''to Medicare''.

Section 412.422(b)(2)

Under § 412.422, in paragraph (b)(2), we are proposing to correct the reference to § 413.80 to § 413.89. The regulations covered at § 413.89 include bad debts, charity, and courtesy allowances.

Section 412.426(a)

Under § 412.426, in paragraph (a), ''Duration of transition period and composition of the blended transition payment,'' we are proposing to replace ''Except as provided in paragraph (d) of this section'' with ''Except as provided in paragraph (c) of this section.'' There is no paragraph (d); this exception should refer to paragraph (c), ''Treatment of new inpatient psychiatric facilities.''

Also in paragraph (a), we are proposing to add the words ''of this part'' after ''as specified in § 412.424(d)'' and ''of this section'' after ''as specified under paragraph (b).'' This regulatory language is required by the **Federal Register**.

In each of paragraphs § 412.426(a)(1) through (a)(3), we are proposing to delete the words ''on or'' directly before the words ''before January''. For example, paragraph (a)(1) currently states, ''For cost reporting periods beginning on or after January 1, 2005 and on or before January 1, 2006* * *'' We are proposing that this statement read: ''For cost reporting periods beginning on or after January 1, 2005 and before January 1, 2006 * * * '' This correction does not represent a change in policy. Rather, it is a correction to conform the regulation text to our policy, which was established in our final rule that appeared in the **Federal Register** on November 15, 2004 (69 FR 66980) (which was subsequently corrected on April 1, 2005 (70 FR 16729)). It is clear that the current regulation text is incorrect. The same January date (for example, January 1, 2007) cannot be both the date on which a new transition period begins and the date on which the previous transition period ends. Our policy, since we established the transition, has been to begin a transition period on or after a January 1 date and to end that transition period before the next transition period begins. Because our regulation text does not accurately reflect our actual policy, we are proposing this correction.

At § 412.426(a)(4), we are proposing to replace the statement, ''For cost reporting periods beginning on or after July 1, 2008, payment is based entirely on the Federal per diem payment amount'' with the following statement: ''For cost reporting periods beginning on or after January 1, 2008, payment is based entirely on the Federal per diem payment amount.'' The transition period during which payment was based on a combination of the Federal per diem payment amount and TEFRA payments, ended on January 1, 2008, not July 1, 2008.

Section 412.432(d)

Under § 412.432, in paragraph (d), ''Outlier payments,'' we are proposing to add the words ''of this part'' after ''subject to the cost report settlement specified in § 412.84(i) and § 412.84(m).'' This regulatory language is required by the **Federal Register** and clarifies that § 412.84(i) and § 412.84(m) refer to 42 CFR part 412, ''Prospective

Payment Systems for Inpatient Hospital Services.''

VII. Provisions of the Proposed Regulations

In this proposed rule, we are proposing to update the IPF PPS payment rates for RY 2012. We are also proposing to revise the IPF PPS payment update period and make other policy changes and clarifications. The following is a summary of the areas that we are addressing in this proposed rule:

- We are proposing to switch the annual update period for the IPF PPS from a rate year that begins on July 1 and goes through June 30 to one that coincides with a FY, that is, that begins on October 1 and goes through September 30. For the update period that begins in 2012, and thereafter, we would refer to the update period as a FY. In order to make this switch, we are proposing that rate year 2012 be a 15-month period, from July 1, 2011 through September 30, 2012. This change in the payment update period would allow us to have one consolidated annual update to both the rates and the ICD–9–CM coding changes (MS–DRG and comorbidities). The coding changes will continue to be effective October 1 of each year.
- We are proposing to rebase and revise the FY 2002-based RPL market basket to a FY 2008-based RPL market basket. We are proposing a 3.0 percent market basket update to the IPF PPS for RY 2012 based on the most recent estimate of the market basket update for the proposed 15-month 2012 IPF PPS rate year, with a 0.25 percentage point reduction as required by section 1886 (s)(3)(A) of the Act.
- We are proposing to adopt IPF policies similar to such IPPS GME policies providing for temporary adjustments to an IPF's FTE cap to reflect residents added due to the closure of an IPF or an IPF's residency training program.
- We are proposing to update the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- We are proposing to update the ECT adjustment by a factor specified by CMS.
- We are proposing to update the national urban and rural cost-to-charge ratio medians and ceilings.
- We are proposing to update the cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.
- We are proposing to describe the ICD–9–CM and MS–DRG classification changes discussed in the annual update to the hospital inpatient prospective payment system regulations.
- We are proposing the best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.
- We are proposing to retain the 17 percent adjustment for IPFs located in rural areas, the 1.31 adjustment for IPFs with a qualifying ED, the 0.5150 teaching adjustment to the Federal per diem rate, and the MS–DRG adjustment factor currently being paid to IPFs for RY 2011.
- We are proposing to update the MS–DRG listing and comorbidity categories to reflect the ICD–9–CM revisions effective October 1, 2010.

VIII. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IX. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would update the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities for discharges occurring during the rate year beginning July 1, 2011 through September 30, 2012. We propose to apply the 15-month FY2008-based RPL market basket increase of 3.0 percent, adjusted by the 0.25 percentage point reduction, as required by section 1886(s)(3)(A) of the Act. In addition, the rule proposes policy changes affecting the IPF PPS teaching adjustment, as well as makes some clarifications and corrections to terminology and regulations text.

B. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the September 19, 1980 Regulatory Flexibility Act (RFA) (Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate that the impact to the Medicare program, and the annual effects to the economy, will be more than $100 million. We estimate that the total impact of these proposed changes for estimated RY 2012 payments compared to estimated RY 2011 payments would be an increase of approximately $110 million (this reflects a $120 million increase from the update to the payment rates and a $10 million decrease due to the proposed update to the outlier threshold amount to decrease estimated outlier payments from approximately 2.2 percent in RY 2011 to 2.0 percent in RY 2012).

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any one year (for details, refer to the SBA Small Business Size Standards found at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=2465b064ba6965cc1fbd2eae60854b11&rgn=div8&view=text&node=13:1.0.1.1.16.1.266.9&idno=13*). Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue that is derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 15, we estimate that the revenue impact of this proposed rule on all IPFs is to increase estimated Medicare payments by about 2.54 percent, with rural IPFs estimated to receive an increase in estimated Medicare payments greater than 3 percent (an aggregate 3.56 percent). Since Medicare payments do not necessarily constitute total revenue for all IPFs, the overall total revenue impact to IPFs would be less than the significant threshold of 3

to 5 percent under the RFA. As a result, the Secretary has determined that this proposed rule will not have a significant impact on a substantial number of small entities. Medicare fiscal intermediaries, Medicare Administrative Contractors, and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity. We solicit comment on the above analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this proposed rule will not have an adverse impact on the rural hospitals based on the data of the 387 rural units and 67 rural hospitals in our database of 1,653 IPFs for which data were available. Therefore, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This proposed rule will not impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $135 million.

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

C. Anticipated Effects of the Proposed Rule

We discuss below the historical background of the IPF PPS and the impact of this proposed rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

In accordance with § 412.424(c)(3)(ii), we indicated that we would evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal per diem and ECT base rates to account for differences between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will reassess the accuracy of all of the factors impacting budget neutrality. In addition, as discussed in section III.C.6 of this proposed rule, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem and ECT base rates. Therefore, the budgetary impact to the Medicare program of this proposed rule will be due to the 15-month market basket update for RY 2012 of 3.0 percent (see section III.C.5 of this proposed rule) as adjusted by the ''other adjustment'' of −0.25 percentage point according to section 1886(s)(3)(A) of the Act, and the proposed update to the outlier fixed dollar loss threshold amount.

We estimate that the RY 2012 impact would be a net increase of $110 million in payments to IPF providers. This reflects a $120 million increase from the update to the payment rates and a $10 million decrease due to the proposed update to the outlier threshold amount to decrease estimated outlier payments from approximately 2.2 percent in RY 2011 to 2.0 percent in RY 2012.

2. Impacts on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this proposed rule, it is necessary to compare estimated payments under the IPF PPS rates and factors for RY 2012 versus those under RY 2011. The estimated payments for RY 2011 and RY 2012 will be 100 percent of the IPF PPS payment, since the transition period has ended and stop-loss payments are no longer paid. We determined the percent change of estimated RY 2012 IPF PPS payments to estimated RY 2011 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the proposed update to the outlier fixed dollar loss threshold amount, the labor-related share and wage index changes for the RY 2012 IPF PPS, and the 15-month market basket update for RY 2012, as adjusted by the ''other adjustment'' according to section 1886(s)(3)(A) of the Act.

To illustrate the impacts of the RY 2012 changes in this proposed rule, our analysis begins with a RY 2011 baseline simulation model based on FY 2009 IPF payments inflated to the midpoint of RY 2011 using IHS Global Insight's most recent forecast of the market basket update (*see* section III.C.5 of this proposed rule); the estimated outlier payments in RY 2011; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2010 pre-floor, pre-reclassified hospital wage index; the RY 2011 labor-market share; and the RY 2011 percentage amount of the rural adjustment. During the simulation, the total estimated outlier payments are maintained at 2 percent of total estimated IPF PPS payments.

Each of the following proposed changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2011 pre-floor, pre-reclassified hospital wage index and RY 2012 labor-related share.
- The 15-month market basket update for RY 2012 of 3.0 percent adjusted by 0.25 percentage point reduction in accordance with section 1886(s)(3)(A) of the Act.

Our final comparison illustrates the percent change in payments from RY 2011 (that is, July 1, 2010 to June 30, 2011) to RY 2012 (that is, July 1, 2011 to September 30, 2012) including all the changes in this proposed rule.

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TABLE 15—Proposed IPF Impact Table for RY 2012

Projected Impacts (% Change)					
Facility by Type	Number of Facilities	Outlier	CBSA Wage Index & Labor Share	Adjusted Market Basket Update[1]	Total Percent Change[2]
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities	1,653	-0.21	0.00	2.75	2.54
Total Urban	1,266	-0.21	-0.16	2.75	2.37
Total Rural	387	-0.18	0.98	2.75	3.56
Urban DPU	854	-0.28	-0.22	2.75	2.23
Urban CAH unit	10	-0.84	-0.21	2.75	1.65
Urban hospital	402	-0.06	-0.04	2.75	2.64
Rural DPU	267	-0.24	1.01	2.75	3.54
Rural CAH unit	53	-0.13	0.60	2.75	3.23
Rural hospital	67	-0.06	1.06	2.75	3.78
Freestanding IPF					
By Type of Ownership:					
Urban Psychiatric Hospitals					
Government	169	-0.08	-0.33	2.75	2.33
Non-Profit	117	-0.07	0.02	2.75	2.69
For-Profit	116	-0.04	0.21	2.75	2.92
Rural Psychiatric Hospitals					
Government	43	-0.07	0.58	2.75	3.28
Non-Profit	9	-0.01	0.99	2.75	3.76
For-Profit	15	-0.03	2.20	2.75	4.98
IPF Units					
By Type of Ownership:					
Urban DPU					
Government	148	-0.43	-0.30	2.75	2.02
Non-Profit	589	-0.27	-0.27	2.75	2.19
For-Profit	117	-0.17	0.06	2.75	2.64
Urban CAH					
Government	4	-1.57	-0.18	2.75	0.90
Non-Profit	6	-0.31	-0.23	2.75	2.20
Rural DPU					
Government	64	-0.25	1.01	2.75	3.52
Non-Profit	153	-0.22	0.93	2.75	3.47
For-Profit	50	-0.27	1.24	2.75	3.73
Rural CAH					

Projected Impacts (% Change)					
Facility by Type	Number of Facilities	Outlier	CBSA Wage Index & Labor Share	Adjusted Market Basket Update[1]	Total Percent Change[2]
Government	21	-0.08	0.38	2.75	3.04
Non-Profit	28	-0.15	0.74	2.75	3.35
For-Profit	4	-0.20	0.80	2.75	3.36
By Teaching Status:					
Non-teaching	1,428	-0.19	0.12	2.75	2.67
Less than 10% interns and residents to beds	130	-0.18	-0.52	2.75	2.04
10% to 30% interns and residents to beds	66	-0.43	-0.34	2.75	1.98
More than 30% interns and residents to beds	29	-0.40	-0.37	2.75	1.96
By Region:					
New England	117	-0.23	-0.89	2.75	1.60
Mid-Atlantic	273	-0.19	-0.73	2.75	1.82
South Atlantic	233	-0.17	0.18	2.75	2.75
East North Central	274	-0.24	0.22	2.75	2.72
East South Central	166	-0.16	0.59	2.75	3.19
West North Central	149	-0.21	0.02	2.75	2.56
West South Central	228	-0.18	1.15	2.75	3.74
Mountain	87	-0.17	0.03	2.75	2.60
Pacific	126	-0.29	-0.40	2.75	2.03
By Bed Size:					
Psychiatric Hospitals					
Under 12 beds	12	-0.43	0.02	2.75	2.31
Beds: 12-24	71	-0.13	1.06	2.75	3.71
Beds: 25-49	70	-0.15	0.31	2.75	2.90
Beds: 50-75	72	-0.05	0.16	2.75	2.87
Over 75 beds	244	-0.04	-0.12	2.75	2.59
Psychiatric Units					
Under 12 beds	189	-0.34	0.72	2.75	3.12
Beds: 12-24	515	-0.26	0.14	2.75	2.62
Beds: 25-49	313	-0.28	-0.15	2.75	2.30
Beds: 50-75	105	-0.27	-0.05	2.75	2.43
Over 75 beds	62	-0.27	-0.56	2.75	1.92

[1] This column reflects the impact of the 15-month market basket update for RY 2012 of 3.0 percent, reduced by 0.25 percentage point in accordance with section 1886(s)(3)(A) of the Act.

[2]Percent changes in estimated payments from RY 2011 to RY 2012 include all proposed changes of this rule. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

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3. Results

Table 15 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type.
- Location.

- Teaching Status Adjustment.
- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,653 IPFs included in this analysis.

In column 3, we present the effects of the proposed update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total estimated IPF payments are 2.2 percent in RY 2011. Thus, we are proposing to adjust the outlier threshold amount from $6,372 in RY 2011 to $7,316 in RY 2012 in order to set total estimated outlier payments equal to 2 percent of total estimated payments in RY 2012. The estimated change in total IPF payments for RY 2012, therefore, includes an approximate 0.2 percent decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 2.2 percent to 2 percent.

The overall aggregate effect of this proposed outlier adjustment updates (as shown in column 3 of table 15), across all hospital groups, is to decrease total estimated payments to IPFs by about 0.21 percent. We do not estimate that any group of IPFs will experience an increase in payments from this proposed update. We estimate the largest decrease in payments to be a 1.57 percent decrease in estimated payments to urban, government IPF units located in CAHs which is due to the small number of IPFs of that type and the high volume of outlier payments made to those IPFs.

In column 4, we present the effects of the proposed budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated RY 2012 payments under the FY 2011 hospital wage index under CBSA classification and associated labor-related share to the simulated RY 2011 payments under the FY 2010 hospital wage index under CBSA classifications and associated labor-related share. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4. However, there would be distributional effects among different categories of IPFs. For example, we estimate a 0.98 percent increase in overall payments to rural IPFs, with the largest increase in estimated payments of 2.2 percent for rural, for-profit freestanding psychiatric hospitals. In addition, we estimate the largest decrease in estimated payments to be a 0.89 percent decrease for IPFs in the New England region.

Column 5 shows the estimated effect of the proposed update to the IPF PPS payment rates, which includes a 3.0 percent 15-month market basket update with the 0.25 percentage point reduction in accordance with section 1886(s)(3)(A).

Column 6 compares our estimates of the changes reflected in this proposed rule for RY 2012, to our estimates of payments for RY 2011 (without these changes). This column reflects all RY 2012 changes relative to RY 2011. The average estimated increase for all IPFs is approximately 2.54 percent. This estimated net increase includes the effects of the 3.0 percent 15-month market basket update adjusted by the ''other adjustment'' of −0.25 percentage point, as required by section 1886(s)(3)(A) of the Act. It also includes the approximate 0.2 percent overall estimated decrease in estimated IPF outlier payments from the proposed update to the outlier fixed dollar loss threshold amount. Since we are making the updates to the IPF labor-related share and wage index in a budget-neutral manner, they will not affect total estimated IPF payments in the aggregate. However, they will affect the estimated distribution of payments among providers.

Overall, no IPFs are estimated to experience a net decrease in payments as a result of the proposed updates in this rule. IPFs in urban areas will experience a 2.37 percent increase and IPFs in rural areas will experience a 3.56 percent increase. The largest payment increase is estimated at 4.98 percent for rural, for-profit freestanding psychiatric hospitals. This is due to the larger than average positive effect of the FY 2011 CBSA wage index and labor-related share updates for rural IPFs in this category.

4. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other PPSs, we estimate that Medicare spending (total Medicare program payments) for IPF services over the next 5 years would be as shown in Table 16 below.

TABLE 16—ESTIMATED PAYMENTS

Rate year	Dollars in millions
July 1, 2011 to June 30, 2012	$4,615
July 1, 2012 to June 30, 2013	4,938
July 1, 2013 to June 30, 2014	5,320
July 1, 2014 to June 30, 2015	5,750
July 1, 2015 to June 30, 2016	6,235

These estimates are based on the current forecast of the increases in the RPL market basket, including an adjustment for productivity, for the rate year beginning in 2012 and each subsequent rate year, as required by section 1886(s)(3)(A) of the Act, as follows:

- 2.6 percent for rate years beginning in 2011 (RY 2012).
- 1.7 percent for rate years beginning in 2012 (RY 2013).
- 1.9 percent for rate years beginning in 2013 (RY 2014).
- 2.1 percent for rate years beginning in 2014 (RY 2015).
- 2.3 percent for rate years beginning in 2015 (RY 2016).

The estimates in Table 14 also include the application of the ''other adjustment,'' as required by section 1886(s)(3)(A) of the Act, as follows:

- −0.25 percent for rate years beginning in 2011.
- −0.1 percent for rate years beginning in 2012.
- −0.1 percent for rate years beginning in 2013.
- −0.3 percent for rate years beginning in 2014.
- −0.2 percent for rate years beginning in 2015.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- 3.3 percent in RY 2012.
- 3.7 percent in RY 2013.
- 4.3 percent in RY 2014.
- 4.9 percent in RY 2015.
- 5.6 percent in RY 2016.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs would receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the RY 2012 IPF PPS. In fact, we believe that access to IPF services will be enhanced due to the patient- and facility-level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Finally, the outlier policy is intended to assist IPFs that experience high-cost cases.

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule.

We note that this proposed rule initiates policy changes with regard to the IPF PPS, and it also provides an update to the rates for RY 2012. We considered making refinements to the IPF PPS in this proposed rule. However,

we decided that we needed more time to assess the data and would therefore once again delay running the regression analysis until we have adequate IPF PPS data. We have initiated the necessary analysis to better understand IPF industry practices. We did not consider rebasing the IPF PPS for concerns that rebasing would be too costly (re-calculate the cost-per-day) and time consuming.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 17 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the proposed changes presented in this proposed rule and based on the data for 1,653 IPFs in our database. All expenditures are classified as transfers to Medicare providers (that is, IPFs).

TABLE 17—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2011 IPF PPS RY TO THE 2012 IPF PPS RY

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$110
From Whom To Whom?	Federal Government To IPF Medicare Providers.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

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

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1862, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1395hh).

Subpart N—Prospective payment system for inpatient hospital services of inpatient psychiatric facilities

2. In § 412.402, new definitions of *''IPF prospective payment system rate year'' and ''MS–IFP–DRG''* are added in alphabetical order to read as follows:

§ 412.402 Definitions.

* * * * *

IPF prospective payment system rate year means —

(1) Through June 30, 2011, the 12-month period of July 1 through June 30.

(2) Beginning July 1, 2011, the 15-month period of July 1, 2011 through September 30, 2012.

(3) Beginning October 1, 2012, the 12-month period of October 1 through September 30, referred to as Fiscal Year (FY).

* * * * *

MS–IFP–DRG means the severity adjusted diagnosis groups used to classify IPF patients. For IPF discharges occurring on or after July 1, 2008, all reference to MS–DRGs used for the IPF PPS are to MS–IPF–DRGs.

* * * * *

3. Section 412.404 is amended by revising paragraph (a)(1) to read as follows:

§ 412.404 Conditions for payment under the prospective payment system for inpatient hospital services of psychiatric facilities.

(a) *General requirements.* (1) Effective for cost reporting periods beginning on or after January 1, 2005, an inpatient psychiatric facility must meet the conditions of this section to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare Part A fee-for-service beneficiaries.

* * * * *

4. Section 412.422 is amended by revising paragraph (b)(2) to read as follows:

§ 412.422 Basis of payment.

* * * * *

(b) * * *

(2) In addition to the Federal per diem payment amounts, inpatient psychiatric facilities receive payment for bad debts of Medicare beneficiaries, as specified in § 413.89 of this chapter.

5. Section 412.424 is amended by adding a new paragraph (d)(1)(iii)(F) to read as follows:

§ 412.424 Methodology for calculating the Federal per diem payment amount.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(F) *Closure of an IPF.* (*1*) For cost reporting periods beginning on or after July 1, 2011, an IPF may receive a temporary adjustment to its FTE cap to reflect residents added because of another IPF's closure if the IPF meets the following criteria:

(*i*) The IPF is training additional residents from an IPF that closed on or after July 1, 2011.

(*ii*) No later than 60 days after the IPF begins to train the residents, the IPF submits a request to its Medicare contractor for a temporary adjustment to its cap, documents that the IPF is eligible for this temporary adjustment by identifying the residents who have come from the closed IPF and have caused the IPF to exceed its cap, and specifies the length of time the adjustment is needed.

(*2*) *Closure of an IPF's residency training program.* If an IPF that closes its residency training program agrees to temporarily reduce its FTE cap according to the criteria specified in paragraph (d)(1)(iii)(F)(*2*)(*ii*) of this section, another IPF(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the residency training program if the criteria specified in paragraph (d)(1)(iii)(F)(*2*)(*i*) of this section are met.

(*i*) *Receiving IPF(s).* For cost reporting periods beginning on or after July 1, 2001, an IPF may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program if the IPF is training additional residents from the residency training program of an IPF that closed a program; and if no later than 60 days after the IPF begins to train the residents, the IPF submits to its Medicare Contractor a request for a temporary adjustment to its FTE cap, documents that it is eligible for this temporary adjustment by identifying the residents who have come from another IPF's closed program and have caused the IPF to exceed its cap, specifies the length of time the adjustment is needed, and submits to its Medicare contractor a copy of the FTE reduction statement by the hospital that closed its program, as specified in paragraph (d)(1)(iii)(F)(*2*)(*ii*) of this section.

(*ii*) *IPF that closed its program.* An IPF that agrees to train residents who have been displaced by the closure of another IPF's program may receive a temporary FTE cap adjustment only if the hospital with the closed program temporarily reduces its FTE cap based on the FTE residents in each program year training in the program at the time

of the program's closure. This yearly reduction in the FTE cap will be determined based on the number of those residents who would have been training in the program during that year had the program not closed. No later than 60 days after the residents who were in the closed program begin training at another hospital, the hospital with the closed program must submit to its Medicare contractor a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the IPF training the displaced residents to obtain a temporary adjustment to its cap; identifies the residents who were in training at the time of the program's closure; identifies the IPFs to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

* * * * *

6. Section 412.426 is amended by revising paragraph (a) to read as follows:

§ 412.426 Transition period.

(a) *Duration of transition period and composition of the blended transition payment.* Except as provided in paragraph (c) of this section, for cost reporting periods beginning on or after January 1, 2005 through January 1, 2008, an inpatient psychiatric facility receives a payment comprised of a blend of the estimated Federal per diem payment amount, as specified in § 412.424(d) of this subpart and a facility-specific payment as specified under paragraph (b) of this section.

(1) For cost reporting periods beginning on or after January 1, 2005 and before January 1, 2006, payment is based on 75 percent of the facility-specific payment and 25 percent is based on the Federal per diem payment amount.

(2) For cost reporting periods beginning on or after January 1, 2006 and before January 1, 2007, payment is based on 50 percent of the facility-specific payment and 50 percent is based on the Federal per diem payment amount.

(3) For cost reporting periods beginning on or after January 1, 2007 and before January 1, 2008, payment is based on 25 percent of the facility-specific payment and 75 percent is based on the Federal per diem payment amount.

(4) For cost reporting periods beginning on or after January 1, 2008, payment is based entirely on the Federal per diem payment amount.

* * * * *

7. Section 412.432 is amended by revising paragraph (d) to read as follows:

§ 412.432 Method of payment under the inpatient psychiatric facility prospective payment system.

* * * * *

(d) *Outlier payments.* Additional payments for outliers are not made on an interim basis. Outlier payments are made based on the submission of a discharge bill and represents final payment subject to the cost report settlement specified in § 412.84(i) and § 412.84(m) of this part.

* * * * *

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

Dated: January 13, 2011.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 20, 2011.

Kathleen Sebelius,

Secretary.

[Note: The following Addendums will not appear in the Code of Federal Regulations].

Addendum A—Rate and Adjustment Factors

Per Diem Rate:

Federal Per Diem Base Rate	$683.68
Labor Share (0.70499)	$481.99
Non-Labor Share (0.29501)	$201.69

Fixed Dollar Loss Threshold Amount:

$7,316

Wage Index Budget Neutrality Factor:

0.9995

Facility Adjustments:

Rural Adjustment Factor	1.17
Teaching Adjustment Factor	0.5150
Wage Index	Pre-reclass Hospital Wage Index (FY2011)

Cost of Living Adjustments (COLAs):

Alaska	
Anchorage	1.19
Fairbanks	1.19
Juneau	1.19
Rest of Alaska	1.21
Hawaii	
Honolulu County	1.21
Hawaii County	1.14
Kauai County	1.21
Maui County	1.21
Kalawao County	1.21

Patient Adjustments:

ECT – Per Treatment	$294.33

Variable Per Diem Adjustments:

	Adjustment Factor
Day 1 -- Facility Without a Qualifying Emergency Department	1.19
Day 1 -- Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

Age Adjustments:

Age (in years)	Adjustment Factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

DRG Adjustments:

MS-DRG	MS-DRG Descriptions	Adjustment Factor
056 057	Degenerative nervous system disorders w MCC Degenerative nervous system disorders w/o MCC	1.05
080 081	Nontraumatic stupor & coma w MCC Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896 897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.88

Comorbidity Adjustments:

Comorbidity	Adjustment Factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings – Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B—RY 2012 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this notice. Tables 1 and 2 display the CBSA-based wage index values for urban and rural providers.

Table 1—RY 2012 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8003
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3471
10420	Akron, OH Portage County, OH Summit County, OH	0.8843
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.9036
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8653
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9456
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7995
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9194
11020	Altoona, PA Blair County, PA	0.8620
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8644
11180	Ames, IA Story County, IA	0.9970
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1964
11300	Anderson, IN Madison County, IN	0.9192
11340	Anderson, SC Anderson County, SC	0.8691
11460	Ann Arbor, MI Washtenaw County, MI	1.0124
11500	Anniston-Oxford, AL Calhoun County, AL	0.7918
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9361
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9001
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9659

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9549
12100	Atlantic City-Hammonton, NJ Atlantic County, NJ	1.1129
12220	Auburn-Opelika, AL Lee County, AL	0.7190
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9538
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9514
12540	Bakersfield, CA Kern County, CA	1.1707
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0255
12620	Bangor, ME Penobscot County, ME	0.9777
12700	Barnstable Town, MA Barnstable County, MA	1.2823
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8583
12980	Battle Creek, MI Calhoun County, MI	0.9656
13020	Bay City, MI Bay County, MI	0.9221
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8488
13380	Bellingham, WA Whatcom County, WA	1.1390
13460	Bend, OR Deschutes County, OR	1.1372
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0525
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8674
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8719

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8611
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7348
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8314
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8989
14060	Bloomington-Normal, IL McLean County, IL	0.9439
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9273
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.2178
14500	Boulder, CO Boulder County, CO	1.0065
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8666
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0667
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2547
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9173
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9209
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9530
15500	Burlington, NC Alamance County, NC	0.8863
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9947
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1250
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0386
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8749
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9195
16020	Cape Girardeau-Jackson, MO-IL Alexander County, IL Bollinger County, MO Cape Girardeau County, MO	0.8983
16180	Carson City, NV Carson City, NV	1.0465
16220	Casper, WY Natrona County, WY	0.9655
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8844
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	1.0235

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.7895
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9354
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9420
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9342
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8829
16940	Cheyenne, WY Laramie County, WY	0.9392
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0593
17020	Chico, CA Butte County, CA	1.1533
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9699
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.7888
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.7731
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9050
17660	Coeur d'Alene, ID Kootenai County, ID	0.9364
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9588
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9481
17860	Columbia, MO Boone County, MO Howard County, MO	0.8282
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8733

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.9027
18020	Columbus, IN Bartholomew County, IN	0.9434
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0141
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8585
18700	Corvallis, OR Benton County, OR	1.0455
18880	Crestview-Fort Walton Beach-Destin, FL Okaloosa County, FL	0.8842
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8186
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9860
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8622
19180	Danville, IL Vermilion County, IL	0.9693
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8168
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8400
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9140
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7621
19500	Decatur, IL Macon County, IL	0.7916
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8736
19740	Denver-Aurora-Broomfield, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0718
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9621
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9699
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7435
20100	Dover, DE Kent County, DE	0.9921
20220	Dubuque, IA Dubuque County, IA	0.8774

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0565
20500	Durham-Chapel Hill, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9664
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9639
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1006
20940	El Centro, CA Imperial County, CA	0.9258
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8449
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9465
21300	Elmira, NY Chemung County, NY	0.8445
21340	El Paso, TX El Paso County, TX	0.8475
21500	Erie, PA Erie County, PA	0.8360
21660	Eugene-Springfield, OR Lane County, OR	1.1384
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8433
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1080
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.3883
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8064
22140	Farmington, NM San Juan County, NM	0.9339
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9323
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8616
22380	Flagstaff, AZ Coconino County, AZ	1.2443
22420	Flint, MI Genesee County, MI	1.1496
22500	Florence, SC Darlington County, SC Florence County, SC	0.8252
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.8144
22540	Fond du Lac, WI Fond du Lac County, WI	0.9223
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9892
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0160
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7599
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9362

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9474
23420	Fresno, CA Fresno County, CA	1.1422
23460	Gadsden, AL Etowah County, AL	0.7180
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9160
23580	Gainesville, GA Hall County, GA	0.9223
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9084
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8507
24140	Goldsboro, NC Wayne County, NC	0.9067
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7717
24300	Grand Junction, CO Mesa County, CO	0.9850
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9169
24500	Great Falls, MT Cascade County, MT	0.8289
24540	Greeley, CO Weld County, CO	0.9496
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9586
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.8882
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9370
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9644
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3686
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8877
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9254
25260	Hanford-Corcoran, CA Kings County, CA	1.1205
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9296
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9158
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.0927
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7714
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.8693
25980	Hinesville-Fort Stewart, GA[1] Liberty County, GA Long County, GA	0.8958

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26100	Holland-Grand Haven, MI	
	Ottawa County, MI	0.8632
26180	Honolulu, HI	
	Honolulu County, HI	1.1807
26300	Hot Springs, AR	
	Garland County, AR	0.9151
26380	Houma-Bayou Cane-Thibodaux, LA	
	Lafourche Parish, LA	
	Terrebonne Parish, LA	0.7852
26420	Houston-Sugar Land-Baytown, TX	
	Austin County, TX	
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	0.9824
26580	Huntington-Ashland, WV-KY-OH	
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	0.8953
26620	Huntsville, AL	
	Limestone County, AL	
	Madison County, AL	0.9191
26820	Idaho Falls, ID	
	Bonneville County, ID	
	Jefferson County, ID	0.9663
26900	Indianapolis-Carmel, IN	
	Boone County, IN	
	Brown County, IN	
	Hamilton County, IN	
	Hancock County, IN	
	Hendricks County, IN	
	Johnson County, IN	
	Marion County, IN	
	Morgan County, IN	
	Putnam County, IN	
	Shelby County, IN	0.9672
26980	Iowa City, IA	
	Johnson County, IA	
	Washington County, IA	0.9657
27060	Ithaca, NY	
	Tompkins County, NY	0.9842
27100	Jackson, MI	
	Jackson County, MI	0.9155
27140	Jackson, MS	
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	0.8042
27180	Jackson, TN	
	Chester County, TN	
	Madison County, TN	0.8404
27260	Jacksonville, FL	
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	0.8884
27340	Jacksonville, NC	
	Onslow County, NC	0.7807
27500	Janesville, WI	
	Rock County, WI	0.9415
27620	Jefferson City, MO	
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	0.8434
27740	Johnson City, TN	
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	0.8105
27780	Johnstown, PA	
	Cambria County, PA	0.8090
27860	Jonesboro, AR	
	Craighead County, AR	
	Poinsett County, AR	0.7757
27900	Joplin, MO	
	Jasper County, MO	
	Newton County, MO	0.8214
28020	Kalamazoo-Portage, MI	
	Kalamazoo County, MI	
	Van Buren County, MI	1.0292

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0619
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9652
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	0.9976
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8798
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7588
28740	Kingston, NY Ulster County, NY	0.9075
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.7842
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9130
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9803
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9289
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8489
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.8196
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0781
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	1.0235
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8447
29540	Lancaster, PA Lancaster County, PA	0.9344
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0298
29700	Laredo, TX Webb County, TX	0.7914
29740	Las Cruces, NM Dona Ana County, NM	0.9296
29820	Las Vegas-Paradise, NV Clark County, NV	1.2099
29940	Lawrence, KS Douglas County, KS	0.8533
30020	Lawton, OK Comanche County, OK	0.8285
30140	Lebanon, PA Lebanon County, PA	0.7807
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9358
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.8903

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30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.8817
30620	Lima, OH Allen County, OH	0.9271
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9617
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8546
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8794
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8563
31020	Longview, WA Cowlitz County, WA	1.0296
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.2130
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.8896
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8847
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8694
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9202
31460	Madera-Chowchilla, CA Madera County, CA	0.7986
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.1294
31700	Manchester-Nashua, NH Hillsborough County, NH	0.9869
31740	Manhattan, KS Geary County, KS Pottawatomie County, KS Riley County, KS	0.7847
31860	Mankato-North Mankato, MN Blue Earth County, MN Nicollet County, MN	0.9083
31900	Mansfield, OH Richland County, OH	0.8918
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3640
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.8837
32780	Medford, OR Jackson County, OR	1.0061

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32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9268
32900	Merced, CA Merced County, CA	1.2359
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0128
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9470
33260	Midland, TX Midland County, TX	0.9711
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0183
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1143
33540	Missoula, MT Missoula County, MT	0.8921
33660	Mobile, AL Mobile County, AL	0.7960
33700	Modesto, CA Stanislaus County, CA	1.2104
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7993
33780	Monroe, MI Monroe County, MI	0.8684
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8442
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8137
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7041
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0363
34620	Muncie, IN Delaware County, IN	0.8206
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9809
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.8738
34900	Napa, CA Napa County, CA	1.4604
34940	Naples-Marco Island, FL Collier County, FL	0.9698
34980	Nashville-Davidson—Murfreesboro-Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9457

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35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2315
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1460
35300	New Haven-Milford, CT New Haven County, CT	1.1515
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9070
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.2955
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8872
35840	North Port-Bradenton-Sarasota-Venice, FL Manatee County, FL Sarasota County, FL	0.9481
35980	Norwich-New London, CT New London County, CT	1.1215
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6354
36100	Ocala, FL Marion County, FL	0.8468
36140	Ocean City, NJ Cape May County, NJ	1.0879
36220	Odessa, TX Ector County, TX	0.9436
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9267
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8877
36500	Olympia, WA Thurston County, WA	1.1269
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9583
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9163
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9566
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8370
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.2377
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9211
37380	Palm Coast, FL Flagler County, FL	0.8405
37460	Panama City-Lynn Haven-Panama City Beach, FL Bay County, FL	0.7954

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37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7455
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8299
37764	Peabody, MA Essex County, MA	1.0979
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8254
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9149
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0803
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0642
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8012
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8605
38340	Pittsfield, MA Berkshire County, MA	1.0371
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9507
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4326
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	0.9899
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1476
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	1.0723
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1354
39140	Prescott, AZ Yavapai County, AZ	1.2234
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0714
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9321
39380	Pueblo, CO Pueblo County, CO	0.8721
39460	Punta Gorda, FL Charlotte County, FL	0.8759
39540	Racine, WI Racine County, WI	1.0580
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9811

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39660	Rapid City, SD Meade County, SD Pennington County, SD	1.0442
39740	Reading, PA Berks County, PA	0.8904
39820	Redding, CA Shasta County, CA	1.4134
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0419
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9661
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1570
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8827
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.0942
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8595
40420	Rockford, IL Boone County, IL Winnebago County, IL	1.0033
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0026
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9034
40660	Rome, GA Floyd County, GA	0.8635
40900	Sacramento-Arden-Arcade-Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.4053
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8728
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.1042
41100	St. George, UT Washington County, UT	0.9133
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0302

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9090
41420	Salem, OR Marion County, OR Polk County, OR	1.1133
41500	Salinas, CA Monterey County, CA	1.5686
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9005
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9266
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8303
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8998
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1979
41780	Sandusky, OH Erie County, OH	0.8686
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5733
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4560
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.6703
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerío Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4296
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2915
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.2162
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1909

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6740
42140	Santa Fe, NM Santa Fe County, NM	1.0847
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.6143
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.8907
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8238
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1556
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9097
43100	Sheboygan, WI Sheboygan County, WI	0.9233
43300	Sherman-Denison, TX Grayson County, TX	0.8279
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8536
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9091
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9299
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9948
43900	Spartanburg, SC Spartanburg County, SC	0.9383
44060	Spokane, WA Spokane County, WA	1.0571
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9130
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0251
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8371
44220	Springfield, OH Clark County, OH	0.9234
44300	State College, PA Centre County, PA	0.8779
44600	Steubenville-Weirton, OH-WV Jefferson County, OH Brooke County, WV Hancock County, WV	0.7315
44700	Stockton, CA San Joaquin County, CA	1.2644
44940	Sumter, SC Sumter County, SC	0.7860
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9905
45104	Tacoma, WA Pierce County, WA	1.1343
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8806
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9054

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9205
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.7748
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9432
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8952
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0150
46060	Tucson, AZ Pima County, AZ	0.9480
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8793
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8843
46340	Tyler, TX Smith County, TX	0.8065
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8471
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.7941
46700	Vallejo-Fairfield, CA Solano County, CA	1.4931
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8219
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0534
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8961
47300	Visalia-Porterville, CA Tulare County, CA	1.0738
47380	Waco, TX McLennan County, TX	0.8403
47580	Warner Robins, GA Houston County, GA	0.8028
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9648

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0723
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8462
48140	Wausau, WI Marathon County, WI	0.9563
48300	Wenatchee-East Wenatchee, WA Chelan County, WA Douglas County, WA	0.9615
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9934
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6675
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.8898
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.9566
48700	Williamsport, PA Lycoming County, PA	0.7256
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0580
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9202
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0002
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.8939
49340	Worcester, MA Worcester County, MA	1.1012
49420	Yakima, WA Yakima County, WA	1.0067
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3536
49620	York-Hanover, PA York County, PA	0.9983
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8625
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1043
49740	Yuma, AZ Yuma County, AZ	0.9283

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

Table 2—RY 2012 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State Code	Nonurban Area	Wage Index
1	Alabama	0.7380
2	Alaska	1.2626
3	Arizona	0.9095
4	Arkansas	0.7222
5	California	1.2056
6	Colorado	0.9933
7	Connecticut	1.1128
8	Delaware	0.9757
10	Florida	0.8409
11	Georgia	0.7566
12	Hawaii	1.1189
13	Idaho	0.7556
14	Illinois	0.8343
15	Indiana	0.8391
16	Iowa	0.8545
17	Kansas	0.7981
18	Kentucky	0.7830
19	Louisiana	0.7712
20	Maine	0.8588
21	Maryland	0.9175
22	Massachusetts[1]	1.1769
23	Michigan	0.8555
24	Minnesota	0.9038
25	Mississippi	0.7620
26	Missouri	0.7655
27	Montana	0.8517
28	Nebraska	0.8911
29	Nevada	0.9350
30	New Hampshire	1.0207
31	New Jersey[1]	-----
32	New Mexico	0.8911
33	New York	0.8185
34	North Carolina	0.8359
35	North Dakota	0.6831
36	Ohio	0.8561
37	Oklahoma	0.7860
38	Oregon	1.0029
39	Pennsylvania	0.8480
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	-----
42	South Carolina	0.8413
43	South Dakota	0.8536
44	Tennessee	0.7886
45	Texas	0.7806
46	Utah	0.8649
47	Vermont	0.9591
48	Virgin Islands	0.7993
49	Virginia	0.7841
50	Washington	1.0184
51	West Virginia	0.7474
52	Wisconsin	0.9186
53	Wyoming	0.9528
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2011. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2010.

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S. 3447/P.L. 111–377
Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (Jan. 4, 2011; 124 Stat. 4106)

S. 3481/P.L. 111–378
To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution. (Jan. 4, 2011; 124 Stat. 4128)

S. 3592/P.L. 111–379
To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the ''First Lieutenant Robert Wilson Collins Post Office Building''. (Jan. 4, 2011; 124 Stat. 4130)

S. 3874/P.L. 111–380
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S. 3903/P.L. 111–381
To authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo. (Jan. 4, 2011; 124 Stat. 4133)

S. 4036/P.L. 111–382
To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury. (Jan. 4, 2011; 124 Stat. 4134)

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